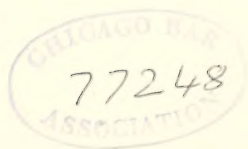




Digitized by the Internet Archive
in 2010 with funding from
CARLI: Consortium of Academic and Research Libraries in Illinois



NOV 8 '60

BOUND.....

37884

IGNATIUS CHAP,
(Plaintiff) Appellee,

v.

LITHUANIAN NATIONAL CATHOLIC
CHURCH OF AMERICA et al.,
Defendants.

LEWIS KENT DALRYMPLE,
(Defendant) Appellant.

8 10/60
8

7

APPEAL FROM CIRCUIT

COURT OF COOK COUNTY.

282 I.A. 621¹

MR. PRESIDING JUSTICE SCANLAN DELIVERED THE OPINION OF THE COURT.

Appeal by Lewis Kent Dalrymple, codefendant in a complaint for the foreclosure of a trust deed, from an order entered May 29, 1934, denying him leave to file an amendment to the petition, striking from the files his petition to vacate a decree pro confesso entered against him, and ordering that the petition be dismissed for want of equity.

Plaintiff, Ignatius Chap, filed his complaint against the Lithuanian National Catholic Church of America, Dalrymple et al., praying for the foreclosure of a trust deed executed by said Church, in 1921, to secure a note for \$6,000. On the day the complaint was filed there was also filed an affidavit which states that Dalrymple and several other defendants "have gone out of this State and on due inquiry cannot be found or are concealed within this State, so that process cannot be served upon them or any of them; that upon due and diligent inquiry their present place or places of residence cannot be ascertained; and affiant further states that the last known place or places of residence of such defendants is unknown." Upon that affidavit a decree pro confesso was entered

37324

IGNATIUS CHAP,
(Plaintiff)

Appellee

v.

LITHUANIAN NATIONAL CATHOLIC
CHURCH OF AMERICA et al.,
Defendants.

LEWIS KENT DALRYMPLE,
(Defendant)

Appellant.

APPEAL FROM CIRCUIT
COURT OF COOK COUNTY.

282 I.A. 621

MR. PRESIDING JUSTICE ROEMER DELIVERED THE OPINION OF THE COURT.

Appeal by Lewis Kent Dalrymple, defendant in a complaint for the foreclosure of a trust deed, from an order entered May 23, 1934, denying him leave to file an amendment to the petition, asking from the files his petition to vacate a decree pro confesso entered against him, and ordering that the petition be dismissed for want of equity.

Plaintiff, Ignatius Chap, filed his complaint against the Lithuanian National Catholic Church of America, Dalrymple et al., praying for the foreclosure of a trust deed executed by said Church, in 1931, to secure a note for \$5,000. On the day the complaint was filed there was also filed an affidavit which states that Dalrymple and several other defendants "have gone out of this State and on due inquiry cannot be found or are concealed within this State, so that process cannot be served upon them or any of them; that upon due and diligent inquiry their present place or places of residence cannot be ascertained; and affiant further states that the last known place or places of residence of each defendant is unknown." Upon that affidavit a decree pro confesso was entered.

against Dalrymple and other defendants. The final decree contains, inter alia, the following: "And the defendants in this cause and all persons claiming through or under them, or either or any of them, shall be forever barred and foreclosed from all equity of redemption and claim of, in and to said premises and over part and parcel thereof which shall have been sold as aforesaid and which shall not have been redeemed according to the laws of this state." Within a year Dalrymple presented his verified petition, which alleges that he had never been served with summons in the cause, or served with a copy of the bill, or received any notice by mail of the pendency of the cause, and which prays that the default entered against him be set aside and that he be granted leave to file his appearance and demur, plead, or answer, to the bill. An order was thereupon entered granting him leave to file his answer, plea or demurrer. In his answer filed he states, inter alia, that his right, title and interest in the premises in question is superior paramount and adverse to that of all parties to the suit; denies that his interest is inferior and subject to the supposed interest of plaintiff and that plaintiff was entitled to any relief whatsoever against him, and he prays that he be dismissed from the suit. The answer also sets forth, at some length, the alleged facts upon which petitioner bases his title. Thereafter plaintiff filed a motion, the nature of which is not shown by the record, but later it was withdrawn and the court, upon its own motion, entered the following order:

"It Is Hereby Ordered that the answer of Lewis Kent Dalrymple filed on the 27th day of February, 1933, be and it is hereby ordered to be considered as an amendment to the petition of the said Lewis Kent Dalrymple filed on the 11th day of February, 1933, and that both the answer and the petition stand as the petition as amended and filed as of the 11th day of February, 1933, and the complainant, by his solicitors, agrees that the answer should be considered as having been filed on the 11th day of February, 1933, together with and as part of the petition.

against Dairypie and other defendants. The final decree was-
 seems, inter alia, the following: "And the defendants in this
 cause and all persons claiming through or under them, or either
 or any of them, shall be forever barred and foreclosed from all
 equity of redemption and claim of, in and to said premises and over
 part and parcel thereof which shall have been sold as aforesaid and
 which shall not have been redeemed according to the laws of this
 state." Within a year Dairypie presented his verified petition,
 which alleges that he had never been served with summons in the
 cause, or served with a copy of the bill, or received any notice by
 mail of the pendency of the cause, and which prays that the delays
 entered against him be set aside and that he be granted leave to
 file his appearance and demurr, plea, or answer, to the bill. An
 order was thereupon entered granting him leave to file his answer,
 plea or demurrer. In his answer filed he states, inter alia, that
 his rights, title and interest in the premises in question is superior
 paramount and adverse to that of all parties to the suit; denies that
 his interest is inferior and subject to the supposed interest of
 plaintiff and that plaintiff was entitled to any relief whatsoever
 against him, and he prays that he be dismissed from the suit. The
 answer also sets forth, at some length, the alleged facts upon which
 petitioner bases his title. Thereafter plaintiff filed a motion,
 the nature of which is not shown by the record, but later it was
 withdrawn and the court, upon its own motion, entered the following
 order:

"It is hereby ordered that the answer of Lewis Kent
 Dairypie filed on the 17th day of February, 1933, be and it is
 hereby ordered to be considered as an amendment to the petition
 of the said Lewis Kent Dairypie filed on the 11th day of
 February, 1933, and that both the answer and the petition stand
 as the petition as amended and filed as of the 11th day of
 February, 1933, and the complaint, by his collectors, agrees
 that the answer should be considered as having been filed on the
 11th day of February, 1933, together with and as part of the
 petition."

"It is further Ordered that a rule be and it is hereby entered upon the complainant to answer said petition as amended or move to strike the same within fifteen days from this date."

Plaintiff then filed a motion to strike the petition, upon the ground that it shows upon its face that petitioner "has in fact no right, title or interest in the premises in question, and has therefore no right to complain of the decree." Thereupon Dalrymple presented to the court a proposed amendment to his petition which set forth, in substance, that at the time the complaint was filed and for many years prior thereto he was an actual resident of Chicago and resided therein with his family, consisting of a wife and two children; that during all of that time his name and correct address appeared regularly in telephone directories and city directories published in the city of Chicago; that at the time the complaint and the affidavit of non-residence were filed, he resided at 8256 Throop street, Chicago, and that he continued to reside there until May, 1932; that there was no other person bearing the same name as his whose name appeared in the telephone directories of said city; that his address, at the time the complaint was filed, could have been easily ascertained and the allegation in the affidavit of non-residence that his residence could not upon diligent inquiry be found was untrue, and that the first knowledge that the complaint had been filed came to him about the time that he filed his petition to vacate the decree. Thereafter the court entered the order from which Dalrymple appeals.

Dalrymple states his position as follows: "This co-defendant who had never made any other claim to the property in question except that of a paramount, superior and adverse title was improperly made a defendant to this bill; that a colorable jurisdiction was obtained over him by an untrue affidavit which recited that he could not be found on due inquiry, when a moment's examination of a telephone directory would have disclosed the

"If the Government cannot find a better way to do this, it should not attempt to do it at all. It is not the business of the Government to interfere with the private lives of its citizens."

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter. He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

Government and to make every effort to bring about a settlement of the matter.

He said that he would be glad to discuss the matter with the

place where ^{he} resided with his family, and where he could have been properly served according to law. A decree was improperly rendered against him by a court without jurisdiction barring and precluding him from all right as to title to the property of which he asserts he is the owner. In due time and in the proper mode he made application to the Court to vacate said decree so erroneously and improperly entered against him and informed the Court that he had a claim of title which could not be adjudicated and determined in said cause, and asked only that he be permitted to adjudicate his rights in such property in a court of competent jurisdiction; that and that only; the court denied his petition for such relief and permitted such decree as entered without jurisdiction against said co-defendant to stand." In support of his position defendant Daltynple contends:

"I. Where a defendant to a bill for the foreclosure of a mortgage or trust deed, sets forth in his answer that he has title to the property and that his title is paramount and superior to that of the mortgagor and derived independently of the mortgagor, such defendant must be dismissed from the suit. The Court in such case is without jurisdiction to pass upon and determine the validity of such defendant's claim to a paramount and independent title. (Citing in support of the same:)

Bosarth v. Landers, 113 Ill. 181.
Whitaker v. Irons, 300 Ill. 254.
Gage v. Perry, 93 Ill. 176.
Annis v. Wolf, 194 Ill. 420.
Chicago Title & Trust v. Edens, 187 Ill. App. 238.
Walker v. C. W. & N. R. R. Co., 199 Ill. App. 610; 277 Ill. 451.
Gage v. Bank Directors, 8 Ill. App. 410.
Eitzer v. Polk, 19 Ill. App. 61.
Devis v. Hamilton, 53 Ill. App. 94.
Runner v. White, 60 Ill. App. 247.
Smith v. Kenny, 89 Ill. App. 293.
 19 R. C. L., Sec. 331, page 529; Sec. 349, page 544;
 Sec. 359, page 553.
Parlin & Orendorf v. Galloway, 95 Ill. App. 60.

"II. The rule that adverse title cannot be litigated upon a bill to foreclose a mortgage, is applicable even though the Chancellor be of the opinion that such claim of a paramount and superior title is without substantial foundation; whatever title and whatever rights such a defendant may have, if any, the Chancellor is without jurisdiction to pass upon the same in such proceedings. (Citing in support of the same:)

Gage v. Perry, 93 Ill. 176.
Bosarth v. Landers, 113 Ill. 181.

"III. The only proper parties to a bill of foreclosure are the mortgagor and those claiming through or under him; the only persons whose estates or liens can be foreclosed or barred in such proceeding are the mortgagor and those whose estates and liens have intervened since the execution and recording of the mortgage. (Citing in support thereof:)

Whitaker v. Long, 300 Ill. 254.
Cage v. Perry, 93 Ill. 176.
Bozarth v. Landers, 113 Ill. 181."

As to these three contentions plaintiff makes the following admission:

"We have no quarrel with the authorities cited by the defendant under these headings, and concede that had not a decree been entered in this case and did the matter stand on the bill and the answer of Dalrymple claiming adverse and paramount title, then the Court should dismiss Dalrymple out of the case; for his claim of paramount title would preclude him from any claim of any right of redemption he might thereafter set forth. Such answer would operate as a disclaimer and as an estoppel against him." But plaintiff contends that as the case, at the time of the filing of the petition, stood upon a final decree, under the present practice act the petition must show facts from which it would appear that Dalrymple had, in fact, a title and that it was adverse and paramount to that of plaintiff; that his claim of a paramount and adverse title appears from the allegations of the petition to be without substantial foundation, and that the pleader, in order to support his claim, is obliged "to deduce and allege by way of conclusions" that Dalrymple had the title he claims; that "a mere sham or pretense of right will not do," but it devolves upon the petitioner to allege the facts which make out his title and thus establish that the decree is unjust to him; that his petition fails in that regard, and, therefore, under the practice act, it was the duty of the lower court to dismiss his petition, as amended, for want of equity.

The fatal weakness in plaintiff's position is that it requires the trial court in passing upon a pleading in a foreclosure

proceeding to determine the merits of an adverse title asserted in the pleading.

"In a bill to foreclose a mortgage, not only the mortgagor, but all persons claiming by, through or under him, or under his chain of title, are proper and necessary parties to the bill, and when such parties are brought before the court their rights may be passed upon and settled by a decree, but we have not been referred to a single authority which sustains the right of a complainant, in such a case, to bring in a party who claims adversely, and have such adverse title passed upon and settled by decrees. Indeed, we believe the authorities all are the other way. * * *

"It has been suggested by appellee that the title of appellant was worthless, - that no judgment or precept was offered in evidence upon which to base his sheriff's deeds. Upon the sufficiency or insufficiency of appellant's title we express no opinion. We merely decide, as appellant's title, whatever it was, appeared to be adverse, the court erred in rendering a decree against him, and for this error the decree will be reversed as to appellant, and as to him the bill be dismissed * * *." (Gage v. Perry, 93 Ill. 176, 179-180.)

"It will be perceived that Mary Bozarth claims to be the owner in fee of the mortgaged premises, by a title adverse to that of the mortgagor. She does not claim anything under the mortgage or under the title of the mortgagor, but independent of that title. The court, by rendering a final decree against her, barred all her rights in default of the payment of the mortgage indebtedness, assumed to pass on the validity of her title. This, it is thought, could not properly be done on a bill to foreclose a mortgage. Undoubtedly, the mortgagees were entitled to a foreclosure as against the mortgagor, who it is conceded was the owner of the premises at the time the mortgage was made; and if their title shall be suffered to become absolute under such foreclosure, the question whether the mortgage title will prevail over the title subsequently acquired by Mary Bozarth under the tax deed, can be best tried in a court of law. That is the usual forum in which to settle and determine adverse legal titles to real property. In Gage v. Perry, 93 Ill. 176, it was held an adverse claim of title, in no way connected with the title of the mortgagor, was not a proper subject for consideration in a suit to foreclose the mortgage. The principle of the case cited would seem to be conclusive of the same question in the case now being considered. The questions made on the argument as to the validity of the title insisted upon by Mary Bozarth, and whether she could be permitted to acquire a title adverse to the mortgage title, were not fairly within the jurisdiction of the court to determine, and it was error to bar her rights under her alleged deed, whatever they may be, as was attempted to be done by the decree. She should have been left free to assert her title, whatever it may be, if the title of complainants under the mortgage should become absolute, and they should seek to obtain possession of the premises in an action at law. The court should give complainants no writ of assistance, but should leave the parties to test the strength of their respective titles in the law courts, where such matters are usually cognizable." (Bozarth v. Landers, 113 Ill. 181, 185-6.)

We find nothing in sec. 50 (3) (Ill. State Bar Statute, 1935), or any other statute applicable to the question before us, to

sustain the argument that Dalrymple's right to question the jurisdiction of the trial court was changed by the entry of the decree, or that overrules the rule laid down in numerous decisions of our Supreme court. In the late case of Bank of Republic v. Adams Bldg. Corp., 359 Ill. 27, the court said (p. 30):

"They (cross-appellants) do not claim title to any part of the premises under either the mortgage or the trustee mortgages but their title is claimed under the Midland Club. Parties cannot confer jurisdiction upon this court by consent. (Blodgett v. Blodgett, 343 Ill. 569; Miller v. Illinois Central Railroad Co., 327 id. 103; Merkel v. Lodgepole, 333 id. 489; People v. City of Peoria, 289 id. 225.) It is the duty of the court on its own initiative to protect its own jurisdiction."

In Prudential Ins. Co. v. Hoge, 359 Ill. 36, cited in Bank of Republic v. Adams Bldg. Corp., supra, it was not only held that the rule in Illinois is that where a party does not claim title through or under either mortgagee or mortgagor he is neither a proper nor a necessary party to the foreclosure proceeding and should be dismissed from the suit, and that the only proper parties to a bill to foreclose a mortgage are the mortgagor and the mortgagee and those who acquired rights under them subsequent to the mortgage, but it was further held that "the only effect the decree in this case can have is to foreclose the lien of defendant in error as against whatever title it received by the mortgage in question." (Italics ours.) The petition sets forth that Dalrymple had title to the property which was paramount, superior and adverse to that of the mortgagor, and that the court was without jurisdiction to pass upon and determine the validity of his title. He did not claim title under the mortgage, and he was, therefore, not a proper party to the complaint. Plaintiff had a right to a decree only as to persons claiming by, through or under the mortgagor, or under his chain of title, yet, in the instant case, where jurisdiction of the person of Dalrymple was obtained by an affidavit the allegations of which are subject to grave suspicion, a decree has been entered against him by a court without jurisdiction of the sub-

fact matter of his title which bars him from asserting any claim to the premises in question. The present counsel for plaintiff did not represent him in the foreclosure proceedings and they make no attempt to justify the manner in which service by publication was obtained against Dalrymple.

The order of the Circuit court of Cook county entered May 29, 1934, is reversed, and the cause is remanded with directions to allow the proposed amendment to be filed and to enter a rule upon plaintiff to answer the petition of defendant Dalrymple, and for further proceedings not inconsistent with this opinion.

ORDER ENTERED MAY 29, 1934, REVERSED AND
CAUSE REMANDED WITH DIRECTIONS.

Sullivan and Friend, JJ., concur.

Good nature of the little child gave him some consolation and relief
 as the journey to London. The greatest trouble for the child
 was not to be separated from his dear friends and family. He was
 taken to a school in London. He was very happy to go.
 He was very happy to go.

The name of the child was not known to the school. He was
 very happy to go. He was very happy to go. He was very happy to go.
 He was very happy to go. He was very happy to go. He was very happy to go.
 He was very happy to go. He was very happy to go. He was very happy to go.

THE END OF THE FIRST PART OF THE STORY.

THE END OF THE FIRST PART OF THE STORY.

37957

WILFRED WESTLUND and
VIOLETTE WESTLUND,
Appellees,

v.

FEDERAL LIFE INSURANCE COMPANY,
a corporation,
Appellant.

APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 621²

MR. PRESIDING JUSTICE SCANLAN DELIVERED THE OPINION OF THE COURT.

An action on an insurance policy tried before the court without a jury. There was a finding and judgment for plaintiffs in the sum of \$1,240. Defendant appeals.

The declaration consisted of a count based upon the policy; also the common counts and an affidavit of claim. Defendant pleaded the general issue and special pleas alleging that the policy was procured by false and fraudulent representations. The pleas were supported by an affidavit of defense.

The policy of insurance is dated June 12, 1928. Barbara Adler, the insured, died on October 25, 1929. The written application for the policy is dated June 6, 1928, and contains, inter alia, the following:

"Such policy to be issued without requiring me to undergo a medical examination and to procure which I do hereby represent and declare to said Company that my health is good; my mind sound, my habits temperate, and that I have had no illness requiring a doctor's care or treatment, except as herein stated, * * *

"I further agree and declare that all the statements, questions and answers contained in this application are and shall be treated as material to the risk and shall form part of the policy contract issued to me by the Company and that the whole truth of such statements and answers is the basis of and part of the consideration for such insurance on my life, which, if granted, is conditional on there having been no intentional or fraudulent misrepresentation or suppression of fact by me."

See [FOLLOW-UP](#) for more information.

22

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

123 .A.1 282

[illegible]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

STANDARD FORM NO. 64 (Rev. 1-60)

• *Journal of Management Education*, 2000, 24(1), 10-12

THE INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

...which is given to the ...

[illegible]

100-443887-100

... ..

the policy of tolerance is based on the

...the

with a large amount of water, and the water is very hot.

2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is a legitimate organization or a subversive one.

[illegible]

The following are the pertinent questions and answers contained in the application:

- "10.a. Have you now any ailments, diseases or disorders? If any, give details. (Answer) None.
- b. Have you ever been sick or disabled? Give date of last disability Month? Year? (Answer) No.
- c. Of what disease or disability? (Answer left blank)
- d. Physician consulted Name Address (Answer left blank)
- "11. Have you any physical or mental defect or infirmity? If so, what? (Answer) None.
- "13. Have you ever had any of the following diseases? * * * lumps or swellings? * * * (Answer) No.
- "17. Is there any reason why you are not a first-class risk for life insurance? (Answer) None"

A photostatic copy of the application is attached to the policy. The policy contains certain standard provisions required by the statutes of the state, including the following:

"This policy and application therefor, a copy of which is hereto attached, shall constitute the entire contract between the parties and all statements made by the insured will in the absence of fraud be deemed representations and not warranties and no such statement will avoid the policy or be used in defense to a claim thereunder, unless it is contained in a written application and a copy of such application be endorsed upon or attached to the policy when issued."

At the commencement of the trial defendant tendered in open court the premiums paid on the policy and admitted the execution and delivery of it, the death of the insured, and the filing of proof of loss in accordance with the terms of the policy.

After plaintiffs had made out a prima facie case against defendant they objected to the introduction of any evidence by defendant upon the ground that the statutes "provide that if they have any contest for fraud or anything beside the payment of premiums that they must contest it within two years. They never filed any contest. This suit was started after two years from the date of the issuance of the policy;" that defendant did not contest the policy until it filed its pleadings in the instant case, and therefore the policy, by its

The following are the questions and answers contained

in the application:

1. Have you now any aliases, aliases or aliases at any, give details. (Answer) None.

2. Have you ever been sick or disabled? Give date of last disability. (Answer) Yes.

3. If ever disabled or disabled? (Answer) Yes.

4. Physical condition. (Answer) Good.

5. Have you any physical or mental defects or disabilities? If so, what? (Answer) None.

6. Have you ever been in any of the following situations: a) b) c) d) e) f) g) h) i) j) k) l) m) n) o) p) q) r) s) t) u) v) w) x) y) z) aa) ab) ac) ad) ae) af) ag) ah) ai) aj) ak) al) am) an) ao) ap) aq) ar) as) at) au) av) aw) ax) ay) az) ba) bb) bc) bd) be) bf) bg) bh) bi) bj) bk) bl) bm) bn) bo) bp) bq) br) bs) bt) bu) bv) bw) bx) by) bz) ca) cb) cc) cd) ce) cf) cg) ch) ci) cj) ck) cl) cm) cn) co) cp) cq) cr) cs) ct) cu) cv) cw) cx) cy) cz) da) db) dc) dd) de) df) dg) dh) di) dj) dk) dl) dm) dn) do) dp) dq) dr) ds) dt) du) dv) dw) dx) dy) dz) ea) eb) ec) ed) ee) ef) eg) eh) ei) ej) ek) el) em) en) eo) ep) eq) er) es) et) eu) ev) ew) ex) ey) ez) fa) fb) fc) fd) fe) ff) fg) fh) fi) fj) fk) fl) fm) fn) fo) fp) fq) fr) fs) ft) fu) fv) fw) fx) fy) fz) ga) gb) gc) gd) ge) gf) gg) gh) gi) gj) gk) gl) gm) gn) go) gp) gq) gr) gs) gt) gu) gv) gw) gx) gy) gz) ha) hb) hc) hd) he) hf) hg) hh) hi) hj) hk) hl) hm) hn) ho) hp) hq) hr) hs) ht) hu) hv) hw) hx) hy) hz) ia) ib) ic) id) ie) if) ig) ih) ii) ij) ik) il) im) in) io) ip) iq) ir) is) it) iu) iv) iw) ix) iy) iz) ja) jb) jc) jd) je) jf) jg) jh) ji) jj) jk) jl) jm) jn) jo) jp) jq) jr) js) jt) ju) jv) jw) jx) jy) jz) ka) kb) kc) kd) ke) kf) kg) kh) ki) kj) kl) km) kn) ko) kp) kq) kr) ks) kt) ku) kv) kw) kx) ky) kz) la) lb) lc) ld) le) lf) lg) lh) li) lj) lk) ll) lm) ln) lo) lp) lq) lr) ls) lt) lu) lv) lw) lx) ly) lz) ma) mb) mc) md) me) mf) mg) mh) mi) mj) mk) ml) mm) mn) mo) mp) mq) mr) ms) mt) mu) mv) mw) mx) my) mz) na) nb) nc) nd) ne) nf) ng) nh) ni) nj) nk) nl) nm) nn) no) np) nq) nr) ns) nt) nu) nv) nw) nx) ny) nz) oa) ob) oc) od) oe) of) og) oh) oi) oj) ok) ol) om) on) oo) op) oq) or) os) ot) ou) ov) ow) ox) oy) oz) pa) pb) pc) pd) pe) pf) pg) ph) pi) pj) pk) pl) pm) pn) po) pp) pq) pr) ps) pt) pu) pv) pw) px) py) pz) qa) qb) qc) qd) qe) qf) qg) qh) qi) qj) qk) ql) qm) qn) qo) qp) qq) qr) qs) qt) qu) qv) qw) qx) qy) qz) ra) rb) rc) rd) re) rf) rg) rh) ri) rj) rk) rl) rm) rn) ro) rp) rq) rr) rs) rt) ru) rv) rw) rx) ry) rz) sa) sb) sc) sd) se) sf) sg) sh) si) sj) sk) sl) sm) sn) so) sp) sq) sr) ss) st) su) sv) sw) sx) sy) sz) ta) tb) tc) td) te) tf) tg) th) ti) tj) tk) tl) tm) tn) to) tp) tq) tr) ts) tt) tu) tv) tw) tx) ty) tz) ua) ub) uc) ud) ue) uf) ug) uh) ui) uj) uk) ul) um) un) uo) up) uq) ur) us) ut) uu) uv) uw) ux) uy) uz) va) vb) vc) vd) ve) vf) vg) vh) vi) vj) vk) vl) vm) vn) vo) vp) vq) vr) vs) vt) vu) vv) vw) vx) vy) vz) wa) wb) wc) wd) we) wf) wg) wh) wi) wj) wk) wl) wm) wn) wo) wp) wq) wr) ws) wt) wu) wv) ww) wx) wy) wz) xa) xb) xc) xd) xe) xf) xg) xh) xi) xj) xk) xl) xm) xn) xo) xp) xq) xr) xs) xt) xu) xv) xw) xx) xy) xz) ya) yb) yc) yd) ye) yf) yg) yh) yi) yj) yk) yl) ym) yn) yo) yp) yq) yr) ys) yt) yu) yv) yw) yx) yy) yz) za) zb) zc) zd) ze) zf) zg) zh) zi) zj) zk) zl) zm) zn) zo) zp) zq) zr) zs) zt) zu) zv) zw) zx) zy) zz).

7. Is there any person who you are not a blood-claim risk for? (Answer) None.

8. A photograph copy of the application is attached to the policy. The policy contains certain standard provisions required by the insurance

of the state, including the following:

"This policy and application therefore, a copy of which is hereto attached, shall constitute the entire contract between the parties and all statements made by the insured shall be the basis of the contract. No agent, broker, or other person shall be authorized to make any statement or to do any act which will vary the policy or be used in defense of a claim. If the policy is cancelled in a written application and a copy of such application be returned upon or attached to the policy when issued."

9. At the commencement of the trial testimony furnished in open

court the testimony given on the policy and attached the question and

answers, at 12, the book of the insured, and the filing of proof of

loss in accordance with the terms of the policy.

10. After the policy had been sent a letter dated 1914 was received

from the defendant to the insurance company, the letter was as follows:

"I am writing you to advise you that if they have any more

proof for them or anything besides the payment of premium and they

will not send it I will sue you. I am writing you to advise you

that I am writing you to advise you that I am writing you to advise you

that I am writing you to advise you that I am writing you to advise you

that I am writing you to advise you that I am writing you to advise you

that I am writing you to advise you that I am writing you to advise you

terms, had become incontestable. Plaintiffs' counsel further insisted that it was necessary for defendant, by a suit in chancery, to bring about a cancellation of the policy before the expiration of the two-year period. In the instant case the incontestability clause contained in the policy follows the form provided by the statute (Cahill's Ill. Rev. St. 1933, ch. 73, par. 375 (3)), and reads in part as follows:

"This policy shall be incontestable after it shall have been in force during the lifetime of the insured for two years from its date * * *."

The trial court properly overruled plaintiffs' contention. (See Chicago Nat. Life Ins. Co. v. Carbaugh, 337 Ill. 483.) Indeed, plaintiffs, in their brief in this court, appear to have abandoned the contention.

Defendant introduced in evidence the signed application for the policy and then called as a witness Dr. Raymond M. Kelly, who testified that he knew Barbara Adler in her lifetime; that he treated her from February 27, 1928, to sometime in July, 1928; that he treated her on February 27 and 28; March 5, 10, 15, 18 and 31; April 3, 11, 13, 15, 23 and 27; May 7 and 15; June 1 and 29, and July 8; saw her last July 31, 1928; that upon all of the aforesaid dates he saw her in her home; that on February 27 she had the grippe, nephritis and frontal sinusitis; that he gave her medicine to reduce the fever, for the nose, and also to relieve the condition of the kidneys; that on March 5, 1928, she developed bronchitis, which became acute by March 14; that she had then developed thrombo phlebitis, viz., an involvement of the veins of the left leg; that in July, 1928, she was cured of the bronchitis and sinusitis, but still had the thrombo phlebitis trouble; that in treating the latter trouble he prescribed the elevation of the leg, cold applications and absolute "quiet" for it as much as possible; that later, when the acute inflammation subsided, he prescribed warm applications; that still later he gave her diathermy treatment for the ailment; that she did not go back to work during his treatments;

that thrombo phlebitis is an inflammation of the veins resulting in the swelling of the legs and pain, and is caused by infection, and sometimes by injuries. Defendant also offered evidence tending to show that the records of the Western Electric Company showed that Barbara Adler was absent from her employment from February 27, 1928, to August 1, 1928, but we are unable to determine from the bill of exceptions whether this testimony was allowed to stand or was stricken.

At the conclusion of the evidence the trial court stated that he was strongly opposed to permitting insurance companies to issue insurance without a medical examination; that the law of this state should be changed so that insurance companies would be required to make a medical examination before issuing a policy; that he was going to find for plaintiffs although he was of the opinion that the probabilities were that the judgment would be reversed by the upper court. After analyzing the lengthy statement made by the trial court we conjecture that he was of the opinion that it is against public policy to permit insurance companies to issue insurance policies without a medical examination. In concluding his opinion the court stated that the ailments of the insured were not serious and that it was "an outrage" for defendant to fight the claim. As neither plaintiff nor defendant raised the question of public policy it was not an issue in the case, and as it is a familiar rule of law that a contract of life insurance which is made in violation of an express statutory prohibition, or the terms of which are contrary to public policy, is illegal and void and no recovery can be had thereon, the action of the trial court in entering a judgment for plaintiffs is difficult to reconcile with his opinion. We may say, however, in reference to the question of public policy, that only one state, Massachusetts, prohibits the issuance of insurance policies without previous medical examination. In eight of the states the amount for which such a policy may be written is restricted. Cases involving the issuance of life insurance policies without medical examination have been before the

[illegible]

Appellate courts of this state a number of times, but the contention that such a policy is against public policy has never been raised, and we are not aware of any decision upon that question by the courts of the sister states. Plaintiffs, of course, made no such contention in the trial court nor here. From anything that we have said, we do not wish to be understood as expressing any opinion upon the question as to whether it would be a wise or an unwise policy for this state to permit the issuance of insurance policies without previous medical examination.

Plaintiffs, in this court, argue that the finding and judgment of the trial court can be sustained upon two grounds: (1) that the trial court was not bound to believe the testimony of Dr. Kelly and that he may have refused to follow it, and (2) that the trial court was justified in regarding the alleged ailments of the insured as trivial in their character and not sufficient to defeat recovery. Plaintiffs introduced no evidence of any kind to contradict the testimony of Dr. Kelly. It is a sufficient answer to the suggestion that the Barbara Adler whom Dr. Kelly treated may not have been the Barbara Adler who was insured under the policy, to say that it would have been a very simple matter for plaintiffs to introduce evidence to show that Dr. Kelly did not treat the insured. Counsel for plaintiffs admitted that the insured had been employed by the Western Electric Company for fourteen years and that she returned to her employment August 1, 1928, which accords with the testimony of Dr. Kelly that he last called on his patient July 31, 1928. The son and daughter of the insured, who are the plaintiffs in this case, could have destroyed the testimony of Dr. Kelly if he did not, in fact, treat their mother. They were not called as witnesses. Only one question was asked the doctor on cross-examination and that one indicated plainly that counsel for plaintiffs considered that the Barbara Adler who was treated by the doctor was the insured. The trial court, in his opinion, assumed that the woman treated was the

insured. The general rule is that positive testimony as to particular facts, uncontradicted by anyone, should control a decision of the court or jury, but that there may be such an inherent improbability in the statements of a witness as to induce the court or jury to disregard his evidence even in the absence of direct conflicting testimony. The manner of testifying may give rise to doubts of the witness's sincerity. But Dr. Kelly is not a party to the proceeding, and, so far as the record shows, is a disinterested witness, and we are unable to find any inherent improbability in his testimony. The trial court, in his opinion, did not question the credibility of Dr. Kelly. Indeed, the court assumed that he was telling the truth, and in referring to his testimony the court stated that it showed that "there was nothing seriously the matter with this woman, nothing that the doctor did not cure her of. It is a bad attitude for your insurance company to take that position in this case. I will tell you, it is an outrage if you can come in on this kind of a case, which is not serious, and defeat it. The woman did not have cancer, tuberculosis or appendicitis; but because she had trivial ailments and had a doctor you went to come in and fight the claim." The instant contention is without merit.

It is a sufficient answer to the second ground urged by plaintiffs to say that the record does not sustain the position of the trial court, or the contention of plaintiffs in this court, that the ailments of the insured were trivial and the answers to the questions were not material misrepresentations that affected the risk and voided the policy. The undisputed evidence shows that the insured, because of her ailments, was absent from her work for a period of four or five months, during which time she was under the care and treatment of a physician, at her home; that he treated her for the grippe, nasal trouble, nephritis, bronchitis, sinusitis and thrombo phlebitis. If the applicant had suffered trivial ailments, such as an

ordinary cold, stomach ache, or the like, a different situation would be presented. Nor can we sustain plaintiffs' further argument that the insured, at the time of making the application, may have had no knowledge that she had suffered from diseases or disorders. At the time she signed the application, June 6, 1928, she was still under the doctor's care and her condition was such that she was unable to return to her work until August 1, 1928. From the undisputed evidence in the case we must find that the insured, in her application for insurance, knowingly made false representations as to matters material to the risk.

In the view that we have taken of this appeal we do not deem it necessary to pass upon a number of contentions raised by defendant.

The judgment of the Superior court of Cook county is reversed and judgment will be entered here in favor of defendant.

JUDGMENT REVERSED AND JUDGMENT HERE FOR
DEFENDANT.

Sullivan and Friend, JJ., concur.

...and, of course, on the other, a different situation
 would be presented. But now we consider the other extreme
 that the country, at the time of writing the constitution, may have had
 no knowledge that the two different types of situation are possible.
 At the time the original constitution was adopted, the two types
 under the constitution were not distinguished. It was only later
 so much as that the two types were not distinguished. It was only later
 that in the case we have just considered, in the application
 of the constitution, the two types were distinguished. It was only later
 that in the case we have just considered, in the application
 of the constitution, the two types were distinguished. It was only later

...to the fact.

...in the case we have just considered, in the application
 of the constitution, the two types were distinguished. It was only later
 that in the case we have just considered, in the application
 of the constitution, the two types were distinguished. It was only later

The language of the constitution may be taken simply as

...and, of course, on the other, a different situation

...and, of course, on the other, a different situation

...and, of course, on the other, a different situation

37971

EDWARD O. TUDOR, Successor Trustee,
Substituted for E. RAY GRANT,
Successor Trustee,

Appellee,

v.

RUSSELL FIREBAUGH, Individually and
as Trustee,

Appellant.

APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 621³

MR. PRESIDING JUSTICE SCANLAN DELIVERED THE OPINION OF THE COURT.

On February 7, 1934, E. Ray Grant, successor trustee under a trust deed securing a bond issue of \$170,000 upon certain premises, filed a complaint against Russell Firebaugh, individually and as original trustee under the trust deed, alleging that Firebaugh, as said trustee, had been in possession of the mortgaged premises from about February 1, 1930, to January 14, 1933; that he had collected \$51,496.75 from the premises and after making necessary disbursements for operation of the premises had retained a balance of \$14,629.00 which he refused to deliver to the successor trustee on demand. The case was tried by Judge Lindsay, who entered a decree finding that defendant had retained the said balance and had failed to account to plaintiff for it, and ordering him, individually and as trustee, to pay to plaintiff, successor trustee, within ten days, the said sum, with interest at five per cent from and after February 28, 1933. Subsequent to the filing of the appeal, Edward O. Tudor, who succeeded E. Ray Grant as successor trustee, was substituted by leave of this court as appellee.

In his amended answer Firebaugh states that about

1947

RECEIVED BY THE
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

APRIL 10, 1947

1

RECEIVED BY THE
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

APRIL 10, 1947

RECEIVED BY THE
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

RECEIVED BY THE
FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

ON FEBRUARY 7, 1944, H. W. HUNT, ATTORNEY AT LAW,

under a trust deed securing a bond issue of \$15,000 upon certain
premises, filed a complaint against Russell H. HUNT, individually
and as executor of the estate of the late H. W. HUNT, alleging that

HUNT, as executor, had been in possession of the mortgaged
premises from about February 1, 1935, to January 14, 1944; that he
had collected \$21,450.75 from the premises and that during

his administration of the premises had retained
a balance of \$1,450.75 which he refused to deliver to the
trustees named on record. The case was filed by Judge Lindsay,

who entered a decree finding that defendant had retained the said
balance and had failed to account to plaintiff for it, and ordering
him, individually and as executor, to pay to plaintiff, defendant

trustee, within six days, the said sum, with interest at five per
cent from and after January 15, 1944. Defendant to the filing
of the report, dated H. Hunt, who answered H. W. Hunt on

defendant's answer, was appointed by leave of this court as

attorney.

IN WITNESS WHEREOF, THE COURT HAS HEREUNTO SET ITS HAND AND SEAL

February 1, 1930, the mortgagors in the tract deed, Antonio Bondi et al., were in default in the payment of interest and principal, and that he, as trustee, declared the entire amount of the indebtedness to be in default; that he, "as trustee, by and through the Bond & Mortgage Company, his depository and agent, did enter into possession of said premises on or about said date and did so continue in possession thereof until the appointment of Frank J. Spencer as receiver for the real estate involved herein on January 17, 1933, in the Superior Court of Cook County in (foreclosure) case No. 539165 * * * wherein Russell Firebaugh, as Trustee, was complainant and Antonio Bondi" et al. were defendants. E. Ray Grant, successor trustee, was substituted as plaintiff in that case.

Firebaugh contends that at the time of the filing of the instant complaint Judge Gentzel, a judge of the Superior court, before whom case No. 539165 (filed June 30, 1931) was pending, "had full jurisdiction over Russell Firebaugh, as trustee, and of E. Ray Grant, successor trustee;" that after the death of said judge the foreclosure case was assigned to Judge Lewis; that because of the pendency of that case Judge Lindsay had no jurisdiction in the instant proceeding of the persons or the subject matter involved therein, and had no legal or equitable right to require an accounting from Firebaugh individually or as trustee; that Frank J. Spencer, receiver in case No. 539165, is the only person legally entitled to collect any moneys that might be due from Firebaugh individually or as trustee.

When the hearing of the instant case commenced, counsel for Firebaugh did not raise any question of jurisdiction, but during the examination of Grant, successor trustee, plaintiff sought to prove by the witness that he had never received an accounting from Firebaugh, whereupon the latter's counsel objected to the evidence upon the ground that the receiver in the foreclosure proceeding was

February 1, 1911, the mortgage in the first deed, which was
of 11, was in full in the payment of interest and principal,
and that he, in return, received the entire amount of the mortgage
which he in turn paid to the bank, by and through the
Bank of New York, New York, the mortgage was paid, and the bank
received the entire amount of the mortgage as on account of the bank's
loan in payment thereof until the expiration of the 1st of January, 1911,
as received for the said mortgage loan on January 1, 1911,
in the register book of said bank in (New York) New York, 1911,
as a mortgage loan to the bank, as evidenced and
acknowledged by the bank's records. The bank's records, however,
showed, and acknowledged as genuine in that case.

The bank's records show that at the time of the loan of
the bank's capital 100000000, a loan of the bank's capital,
which was the bank's capital (100000000) was paid, and
this transaction was made through the bank, and at the time
of the bank's capital, that after the bank's capital was
invested in the bank, the bank's capital was paid to the
bank of New York, New York, and no mortgage in the
bank's records of the bank on the subject matter involved
therein, and no legal or equitable right to receive an accounting
from the bank, and the bank's capital was paid to the bank,
which is now the bank's capital, and the bank's capital was
paid to the bank, and the bank's capital was paid to the bank,
on the bank's capital.

Then the bank of the bank was paid, and the bank's
for the bank's capital was paid to the bank, and the bank's
the bank's capital was paid to the bank, and the bank's
paid by the bank, and the bank's capital was paid to the bank,
the bank's capital was paid to the bank, and the bank's
and the bank's capital was paid to the bank, and the bank's

the only proper person to make a demand upon Firebaugh for an accounting and that a demand by the successor trustee would constitute an interference with the receiver in his duties and would subject the successor trustee to contempt proceedings in the foreclosure suit. The court then, and several times thereafter during the hearing, stated that the instant proceeding did not contemplate interference with the jurisdiction of the court hearing the foreclosure proceeding nor did it seek to control any funds which were in the possession of the receiver or under the control of that court; that the sole inquiry in the instant proceeding concerned the rents collected by Firebaugh, as trustee, from the particular building between the date he took possession, control and management of the same and the date when the receiver was appointed by Judge Gentsel in the foreclosure proceeding. The only answer of counsel for Firebaugh to the court's position was that a demand by the successor in trust for an accounting was an attempt to interfere with the receiver appointed by Judge Gentsel. There is no merit in Firebaugh's position. The foreclosure bill was brought against the owner of the equity of redemption and other persons having an interest in the property subordinate to the lien of the first mortgage. The bondholders were not made parties, and while it is true that the owner of the property would be entitled to credit for any moneys collected by the original trustee, nevertheless, the actual disposition the trustee made of the money collected by him was immaterial in that proceeding. In the instant case the successor trustee acted for the benefit of the bondholders and sought an accounting of the rent moneys collected by Firebaugh, the original trustee. In the foreclosure proceeding a final order like the one in the instant case could not have been entered, and the one that was here entered in no way interferes with the jurisdiction of the court in the foreclosure proceeding. Other good grounds why there

[illegible]

is no merit in the instant contention might be urged, if it were necessary. The authorities cited by Firebaugh in support of his position differ from the present case upon the facts.

That there is \$14,629.95 due from the rents collected during the period that Firebaugh, as trustee, was in possession and control of the building upon the premises cannot be seriously disputed. Indeed, his evidence clearly establishes that fact. He testified that the audit made by Ashley, Reidy & Company, which showed that there was a balance of \$14,629.95 due from Bond & Mortgage Company to the trustee on account of the rents collected during the period in question, was correct, but that Bond & Mortgage Company had never paid him that sum or any part of it. He contends that the moneys collected from the real estate were not received and kept by him as trustee; that "they were all paid to the Bond & Mortgage Company agent of the bondholders and trustee's depository." In support of this contention he refers to Section 1, Article 2, of the trust deed. That section refers only to moneys paid by the mortgagor monthly on account of principal and interest, moneys paid on account of federal tax, and for prepayment or redemption of bonds. It has no application to moneys collected by the trustee from the operation of the mortgaged premises. He also refers to Article 8, Section 1, which provides that in case of default the trustee may take possession of the premises and operate the same, but does not contain any provision that gives the trustee the right to deposit any of the moneys received as rents with Bond & Mortgage Company, or that makes Bond & Mortgage Company the agent of the bondholders and trustee's depository for any rents deposited with it. Page 6 of the abstract, to which we are referred, does not follow the record sequentially and it is so artfully drafted that it would appear therefrom that Article 8 or Article 9 contains a

in no way in the instant connection might be argued, it is not
necessary. The authorities cited by Wills are in support of his
position rather than the present case upon the facts.
That there is no, there is from the facts collected
during the period that Wills, as trustee, was in possession
and control of the collection upon the premises cannot be seriously
disputed. Indeed, his evidence directly establishes that fact.
He testified that the entire sale of Wills, being a company, which
showed that there was a balance of \$14,750.00 due from him to
Kortge Company for the balance on account of the rents collected
during the period in question, was correct, but that he had a mortgage
company had never paid him his sum or any part of it. He testified
that the money collected from the rent sales was not received and
paid by him as trustee; that "they were all paid to the land &
mortgage company agent at the bankhouse and trustee's company."
In support of this contention he refers to Article 1, Article 2, and
the first book. That section refers only to money paid by the
mortgagee monthly on account of principal and interest, money
paid on account of Federal tax, and for payment of redemption
of bonds. It has no application to money collected by the trustee
from the operation of the mortgage premises. He also refers to
Article 3, Section 1, which provides that in case of default the
trustee may take possession of the premises and operate the same,
but does not contain any provision that gives the trustee the right
to receive any of the money received on rents with Wills & Wills
Company, or that when Wills & Wills Company the agent of the
trustee and trustee's company for the mortgage premises with
it. None of the above, in which he is referred, does not
define the terms "mortgage" and it is so clearly stated that
it would appear therefore that Article 1 or Article 2 contains a

provision that Bond & Mortgage Company was made the agent of the bondholders to receive the rents collected from the building while Firebaugh, as trustee, was in possession and control of the same. We are not called upon to decide whether or not if the trust deed had contained such a provision it would be binding upon the bondholders, in view of the peculiar relationship that existed between Firebaugh and Bond & Mortgage Company, as shown by the evidence. By reference to the record we find that Article 9 refers solely to foreclosure, sale and distribution.

There is no provision in the trust deed giving any right to Bond & Mortgage Company to operate the mortgaged premises. Firebaugh, as trustee, was given the right to take possession of the building after default in payments and to manage and control the same. It is clear that he, as trustee, took possession of the premises and operated them during the period in question and that the rent moneys were collected by him as trustee. In his amended answer he states that upon the default of the mortgagors he declared the entire amount of the indebtedness secured by the trust deed to be in default, and that "Russell Firebaugh, as Trustee, by and through the Bond & Mortgage Company, his depository and agent, did enter into possession of said premises on or about said date and did so continue in possession thereof until the appointment of Frank J. Spencer as receiver for the real estate involved herein on January 17, 1933." (Italics ours.) Firebaugh testified that as trustee he took possession of the property December 17, 1931, and that he continued to operate it as trustee until sometime in January, 1933; that the rents "were collected under the name of Russell Firebaugh, trustee, by - we had a building manager out there and that building manager reported to Grant, and Grant supervised the collection of the rents. * * * Q. You had certain representatives who acted for you as trustee, collecting the rents,

provision that Bond & Mortgage Company was made the agent of the
bondholders to receive the rents collected from the building during
the term, as trustee, was in possession and control of the same.
We are not called upon to decide whether or not at the time that
had contained such a provision it would be binding upon the bond-
holders, in view of the peculiar relationship that existed between
the Bond & Mortgage Company, as shown by the evidence.
By reference to the record we find that Article 9 of the mortgage in
reference to the same was as follows:

There is no provision in the deed here giving any right
to Bond & Mortgage Company to operate the mortgaged premises. The
deed, as trustee, was given the right to take possession of the
building after default in payments and to manage and control the
same. It is clear that the trustee, took possession of the
premises and operated them during the period in question and that
the rents were collected by him as trustee. In his capacity
as trustee he states that upon the default of the mortgagor he devoted
the entire amount of the indebtedness secured by the deed to
be in the building, and that "immediately thereafter, by and
through the Bond & Mortgage Company, the building and grounds, did
enter into possession of said premises on or about July 1st and
did so continue in possession thereof until the expiration of
Term 7, 1907 as receiver for the real estate involved herein
as trustee, 1907, 1908, 1909, 1910, 1911, 1912, 1913, 1914,
as trustee he took possession of the property December 17, 1911,
and that he continued to operate it as trustee until sometime in
January, 1912, that the rents were collected under the name of
the Bond & Mortgage Company, trustee, by - we had a building manager and
there and that building manager reported to Bond & Mortgage
Company the collection of the rents. W. W. C. You had certain
representatives who acted for you as trustee, collecting the rents,

didn't you? A. "All, whether it was that way or whether Grant was acting as the agent of the Bond & Mortgage Company is a legal conclusion that I am not sure of." On May 16, 1931, he sent the following notice to the tenants of the building:

"May 16th
1931

"To the Tenants of the building
located at N. E. Cor. S. Central
& Adams St., Chicago.

"You are hereby notified that Antonio Bondi is no longer agent for Russell Firebaugh, as Trustee, and is not authorized to collect the rents from the building at the Northeast Corner, S. Central Avenue and Adams Street, Chicago.

"You are further notified that Mr. and Mrs. I. W. Besinger have been appointed managers of this building and are authorized to collect the rents, manage the building and handle all complaints.

"You are further notified not to pay any more rent to Antonio Bondi in the future and you will be held liable for any rent paid to Antonio Bondi after this date.

"Russell Firebaugh
Russell Firebaugh, as Trustee.

"Mr. and Mrs. Besinger
will reside at the
above building."

Before he took possession of the premises, on February 1, 1930, Firebaugh sent the following letter to Huntington & Company, who had been acting as agents in the collection of the rents of the premises:

"THE BOND & MORTGAGE COMPANY
ESTABLISHED 1895
11 South La Salle Street
Telephone Randolph 4500
Chicago

"September 9, 1929.

"Huntington & Company,
5609 W. Madison Street,
Chicago, Illinois.

"Gentlemen:

"You and each of you are individually, severally and collectively notified that the undersigned has elected to, and has, served notice upon the tenants of the building located at the N. E. corner of S. Central Avenue and W. Adams Street, Chicago, upon which you have been acting as Agent under and by virtue of a certain deed of trust, recorded as Document #8920092.

"Copy of special Registered Mail notice is attached herewith.

"Please be advised that if you attempt to collect the rents of said premises, or in any way interfere with the undersigned in the collection of said rents, that you will be held liable for any damage accruing by reason thereof.

"Please accept this as direct and constructive notice in the above premises.

"Very truly yours,

"Russell Firebaugh
Russell Firebaugh, as Trustee
under Document No. 8920092

"hc"

Firebaugh also sent the following letter to the tenants of the building:

"September 9,
1929

"To the Tenants of the Columbus Park Apartments, located at N. W. Corner S. Central Avenue and W. Adams Street, Chicago, Illinois.

- "(1) You are hereby notified that there has been a default in the covenants of the first mortgage trust deed on your building.
- "(2) The first mortgage trust deed contains a provision that in the event of a default, the trustee may elect to notify all tenants to pay their rent direct to the trustee or the Trustee's agent.
- "(3) The trust deed further provides that if the tenant fails to do this after having received a notice, that the tenant is still liable for the rent; even though the tenant may have paid it to the agent of the owner, or otherwise.
- "(4) You are hereby notified that the trustee elects to have you make payment direct to The Bond & Mortgage Company, 11 South La Salle Street, Chicago.

"Very truly yours,

"Russell Firebaugh,
as Trustee under Document #8920092."

Grant, successor in trust, testified that he was an employee of Bond & Mortgage Company "for about fourteen years and continued until about the middle of January, 1933;" that "the rents (from the premises in question) were collected by Bislinger & West and turned over to the office (of Bond & Mortgage Company), for Russell Firebaugh, as trustee.

1911-1912 10-11-12 13-14-15 16-17-18 19-20-21 22-23-24 25-26-27 28-29-30 31-32-33 34-35-36 37-38-39 40-41-42 43-44-45 46-47-48 49-50-51 52-53-54 55-56-57 58-59-60 61-62-63 64-65-66 67-68-69 70-71-72 73-74-75 76-77-78 79-80-81 82-83-84 85-86-87 88-89-90 91-92-93 94-95-96 97-98-99 100-101-102 103-104-105 106-107-108 109-110-111 112-113-114 115-116-117 118-119-120 121-122-123 124-125-126 127-128-129 130-131-132 133-134-135 136-137-138 139-140-141 142-143-144 145-146-147 148-149-150 151-152-153 154-155-156 157-158-159 160-161-162 163-164-165 166-167-168 169-170-171 172-173-174 175-176-177 178-179-180 181-182-183 184-185-186 187-188-189 190-191-192 193-194-195 196-197-198 199-200-201 202-203-204 205-206-207 208-209-210 211-212-213 214-215-216 217-218-219 220-221-222 223-224-225 226-227-228 229-230-231 232-233-234 235-236-237 238-239-240 241-242-243 244-245-246 247-248-249 250-251-252 253-254-255 256-257-258 259-260-261 262-263-264 265-266-267 268-269-270 271-272-273 274-275-276 277-278-279 280-281-282 283-284-285 286-287-288 289-290-291 292-293-294 295-296-297 298-299-300 301-302-303 304-305-306 307-308-309 310-311-312 313-314-315 316-317-318 319-320-321 322-323-324 325-326-327 328-329-330 331-332-333 334-335-336 337-338-339 340-341-342 343-344-345 346-347-348 349-350-351 352-353-354 355-356-357 358-359-360 361-362-363 364-365-366 367-368-369 370-371-372 373-374-375 376-377-378 379-380-381 382-383-384 385-386-387 388-389-390 391-392-393 394-395-396 397-398-399 400-401-402 403-404-405 406-407-408 409-410-411 412-413-414 415-416-417 418-419-420 421-422-423 424-425-426 427-428-429 430-431-432 433-434-435 436-437-438 439-440-441 442-443-444 445-446-447 448-449-450 451-452-453 454-455-456 457-458-459 460-461-462 463-464-465 466-467-468 469-470-471 472-473-474 475-476-477 478-479-480 481-482-483 484-485-486 487-488-489 490-491-492 493-494-495 496-497-498 499-500-501 502-503-504 505-506-507 508-509-510 511-512-513 514-515-516 517-518-519 520-521-522 523-524-525 526-527-528 529-530-531 532-533-534 535-536-537 538-539-540 541-542-543 544-545-546 547-548-549 550-551-552 553-554-555 556-557-558 559-560-561 562-563-564 565-566-567 568-569-570 571-572-573 574-575-576 577-578-579 580-581-582 583-584-585 586-587-588 589-590-591 592-593-594 595-596-597 598-599-600 601-602-603 604-605-606 607-608-609 610-611-612 613-614-615 616-617-618 619-620-621 622-623-624 625-626-627 628-629-630 631-632-633 634-635-636 637-638-639 640-641-642 643-644-645 646-647-648 649-650-651 652-653-654 655-656-657 658-659-660 661-662-663 664-665-666 667-668-669 670-671-672 673-674-675 676-677-678 679-680-681 682-683-684 685-686-687 688-689-690 691-692-693 694-695-696 697-698-699 700-701-702 703-704-705 706-707-708 709-710-711 712-713-714 715-716-717 718-719-720 721-722-723 724-725-726 727-728-729 730-731-732 733-734-735 736-737-738 739-740-741 742-743-744 745-746-747 748-749-750 751-752-753 754-755-756 757-758-759 760-761-762 763-764-765 766-767-768 769-770-771 772-773-774 775-776-777 778-779-780 781-782-783 784-785-786 787-788-789 790-791-792 793-794-795 796-797-798 799-800-801 802-803-804 805-806-807 808-809-810 811-812-813 814-815-816 817-818-819 820-821-822 823-824-825 826-827-828 829-830-831 832-833-834 835-836-837 838-839-840 841-842-843 844-845-846 847-848-849 850-851-852 853-854-855 856-857-858 859-860-861 862-863-864 865-866-867 868-869-870 871-872-873 874-875-876 877-878-879 880-881-882 883-884-885 886-887-888 889-890-891 892-893-894 895-896-897 898-899-900 901-902-903 904-905-906 907-908-909 910-911-912 913-914-915 916-917-918 919-920-921 922-923-924 925-926-927 928-929-930 931-932-933 934-935-936 937-938-939 940-941-942 943-944-945 946-947-948 949-950-951 952-953-954 955-956-957 958-959-960 961-962-963 964-965-966 967-968-969 970-971-972 973-974-975 976-977-978 979-980-981 982-983-984 985-986-987 988-989-990 991-992-993 994-995-996 997-998-999 1000-1001-1002 1003-1004-1005 1006-1007-1008 1009-1010-1011 1012-1013-1014 1015-1016-1017 1018-1019-1020 1021-1022-1023 1024-1025-1026 1027-1028-1029 1030-1031-1032 1033-1034-1035 1036-1037-1038 1039-1040-1041 1042

and because according to reason itself.

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

upper limb shift

RECEIVED: 1964-11-11

Figure 1

Approved by _____

2000 6 1 1

© 2000 Blackwell Science Ltd

TO THE BOARD OF THE UNIVERSITY OF THE STATE OF NEW YORK, INCORPORATED IN 1784, AND REORGANIZED IN 1962, BY CHAPTER 1000 OF THE LAWS OF 1962, AND AS AMENDED, AND TO THE COMMISSIONER OF EDUCATION, ALBANY, NEW YORK.

(1) You are hereby notified that there has been a default in the payment of the first mortgage note due on your

(M) The first mortgage bond does contain a provision that in the event of a default, the trustee may sell the property to pay their debt. It is not clear if the trustee or the

1. The first step in the process of the investigation is to determine the nature of the problem. This is done by gathering information from the complainant and the person involved in the problem. The information gathered is then used to determine the nature of the problem and the steps that need to be taken to resolve it.

(4) You are hereby notified that the trustee already has your name removed from the deed & mortgage company. If you wish to have your name added back, please advise the trustee.

1911

SECRET

[illegible]

* * * The receipts were signed by Russell Firebaugh, as trustee. Mr. Firebaugh made collections through agents as trustee. * * * The money that Firebaugh, as trustee, turned over to the Bond & Mortgage Company was put in the general account." The witness further testified that Firebaugh as trustee under other trust deeds collected the rents in the same way; that the office of Russell Firebaugh was also the office of Bond & Mortgage Company.

Firebaugh contends that as trustee he "was not liable for the default of an agent such as the Bond & Mortgage Co. selected with reasonable care, unless he is guilty of 'willful misconduct and gross negligence' in the selecting of said agent." In support of this contention he reiterates the argument that under the provisions of the trust deed Bond & Mortgage Company was made the agent of the bondholders in receiving the amounts collected from the rents. That we have already said on that subject is sufficient.

Bond & Mortgage Company was not a bank: it was engaged in the business of marketing and underwriting real estate securities. Firebaugh and the company had a joint office. He was the president and general manager of the company and its principal stockholder. He testified that he guessed that he was chairman of the board of directors. He was made trustee in all of the many bond issues of Bond & Mortgage Company. He further testified that all of the numerous allowances made by the courts to him as trustee for services rendered by him under the trust deeds negotiated by the company belonged to the company and were turned over by him to it; that "my activities as trustee were mainly those of an instrumentality of the Bond & Mortgage Company." In January, 1934, a receiver was appointed for Bond & Mortgage Company by the United States court and the assets of the company were turned over to that officer. Firebaugh testified that at the time the receiver took possession the company owed Russell Firebaugh, trustee, under various trust deeds, "not over

eighty" thousand dollars; that he allowed all of the moneys collected from the rentals of the building to be deposited "in the general account of the Bond & Mortgage Company;" that around 1930 Bond & Mortgage Company owed his mother, on account of a loan made by her to it, "about eighty some thousand dollars;" that the company had given her certain collateral to secure the payment of the indebtedness and that he later put up "as additional security, collateral security, to guarantee the company's indebtedness to her," his 8,000 shares of stock in the company. He further testified: "I was not able to pay all just debts in the ordinary course of business on February 7, 1934." From his testimony it appears that at the time of the trial he had no assets save "a few little personal things" and "a forty foot boat." He first stated that he owned a vacant lot at 217 Siegel street, but he afterward admitted that he had transferred it. Wirebaugh took possession of the premises on December 17, 1931, and immediately commenced to turn over the rents collected to the company, and he continued that practice until the receiver took possession on January 17, 1933. It would appear from his own testimony that he realized in 1930 that the financial condition of the company was not strong. Nevertheless, he continued to turn over to the company the rents from the building without obtaining any security of any kind whatsoever, and he persisted in this practice until the company was forced into the hands of a receiver. The great depression was already on when he took charge of the building, and it is a matter of common knowledge that during the depression companies like Bond & Mortgage Company were seriously involved. Yet, he took no steps to withdraw the funds or to obtain any security for the payment of the same; although Bond & Mortgage Company was practically his company and he controlled it. He stated that he was an instrument of Bond & Mortgage Company in his "activities as trustee," and he seems to have

[illegible]

intentionally disregarded his duties and obligations as a trustee. Under the facts of the case, the rent moneys turned over to the company were but loans to it. In his dealings he acted in a dual capacity. As trustee he turned the rents over to the company, and as president and manager of the company he, in effect, received them and caused the moneys to be diverted to purposes contrary to the interests of the bondholders for whom he had collected them. The conduct of Wisnough as trustee under the trust deed in question constituted wilful misconduct and gross negligence.

In conclusion we may say that he cites several cases decided by this court which he claims approve Section 1, Article 2, of the trust deed and which he claims approve his right to deposit the rents with Bond & Mortgage Company. The validity of section 1 is not involved in this proceeding and, as we have heretofore pointed out, that section has no application to a situation where the trustee operated the mortgaged premises after default. None of the cases cited construes Section 1, Article 2, or even refers to it. In discussing the cases cited counsel persists in assuming that Bond & Mortgage Company was the agent of the bondholders in receiving the rents.

The decree entered is fully justified under the facts and the law. It should be and it is affirmed.

AFFIRMED.

Sullivan and Friend, JJ., concur.

38000

FANNIE WATSON, Beneficiary
of JAMES WATSON, Deceased,
Appellee,

v.

METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,
Appellant.

117
APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 621

MR. PRESIDING JUSTICE SCANLAN DELIVERED THE OPINION OF THE COURT.

An action of the fourth class in the Municipal court of Chicago upon a policy of life insurance issued by defendant in the sum of \$1,000. There was a trial by the court without a jury and a finding and judgment in favor of plaintiff and against defendant for \$900. Defendant appeals.

Plaintiff alleges in her statement of claim that defendant issued, on February 21, 1933, a policy of life insurance on the life of her son, James Watson, in which she was named as beneficiary; that the policy was in full force when he died, on June 29, 1935; that she has requested defendant to pay the amount of the policy to her but it has refused to pay her said sum. The affidavit of merits filed by defendant states, inter alia, that the policy was issued pursuant to an application signed by James Watson; that he answered the questions contained in the application; that in said application he stated that the statements and answers therein were correct and wholly true and that they would form the basis of the contract of insurance if one were issued; that the application was attached to and made a part of the policy; that in the application Watson was asked the following questions, and gave the following answers:

YOUTH ALLIANCE, Incorporated,
1111 North Dearborn, Chicago,
Illinois.

YOUTH ALLIANCE, Incorporated,
1111 North Dearborn, Chicago,
Illinois.

YOUTH ALLIANCE, Incorporated,
1111 North Dearborn, Chicago,
Illinois.

RE: YOUTH ALLIANCE, Incorporated, and its officers and members.

On review of the record in the Chicago case in the Municipal Court of Chicago upon a policy of life insurance issued by defendant in the sum of \$1,000. There was a trial by the court without a jury and a finding and judgment in favor of plaintiff and against defendant for \$1000. Defendant appeals.

Plaintiff alleges in her statement of claim that defendant issued, on February 21, 1933, a policy of life insurance on the life of her son, James Watson, in which she was named as beneficiary; that the policy was in full force when he died, on June 28, 1933; that she has received defendant as pay the amount of the policy so far as it has refused to pay her said sum. The affidavit of service filed by defendant states, inter alia, that the policy was issued pursuant to an application signed by James Watson; that he answered the questions contained in the application; that in said application he stated that the statements and answers therein were correct and wholly true and that they would form the basis of the contract of insurance if one were issued; that the application was attached to and made a part of the policy; that in the application James Watson asked the following questions, and gave the following answers:

"Occupation: Student, Hyde Park School. Exact duties of Occupation: Studying. Former Occupations (Within the last ten years): Same. Place of Business. By whom employed: Stony Island Ave. Hyde Park H. School;" that these answers were false and untrue and known by him to be false and untrue; that if the said questions had been answered truthfully the policy would not have been issued; that upon the date of the application Watson was an exconvict, on parole from the State Reformatory at Pontiac, Illinois; that he was not and never had been a student at Hyde Park high school. The affidavit admits liability of defendant in the sum of \$8.34, the amount of premiums paid, and alleges that said sum has been tendered to plaintiff and refused.

On August 21, 1934, by agreement of the parties, a jury was waived and the cause was submitted to the court. At the outset of the hearing it was stated by counsel that the parties "agreed fairly well on the facts" and that the case might be submitted to the court "on a statement of fact;" that the only fact upon which they did not agree related to what occurred at the time that the application was signed; that plaintiff insisted that the insured stated to the agent of defendant company who took the application that he had been sent to the reform school at Pontiac upon a charge of robbery and that the insured was frank in his answers to all questions. The bill of exceptions shows that the following then occurred:

"The Court: * * * Let the record show that the case is submitted to me on written briefs and argument. * * *

"Mr. Welsh (attorney for defendant): All right. Jury waived, submitted to the court on a statement of facts on briefs, continued to next Monday, that is, I take it, not for a decision. You want to get the briefs in next Monday, and you will pass upon the case at whatever time Your Honor has read."

The bill of exceptions then shows the following:

"Statement of facts in brief submitted to the Court on

[illegible][illegible]

"The above information was obtained from the files of the FBI, New York Office, dated 10-10-68." (S)

1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 26

10/10/1964

you from all of our family. You're all loved in comments!

August 27, 1934, by Roynes, O'Connor & Luciakam, attorneys for the defendant, Metropolitan Life Insurance Company:

"This is an action by Fannie Watson against the Metropolitan Life Insurance Company upon a policy of insurance No. 5191502, issued upon the life of one James Watson, with the present plaintiff named as beneficiary. This policy was issued February 21, 1933, upon the application of James Watson which application was made on February 9, 1933, and is attached and made a part of the above mentioned policy.

"The application in part A contains the following question: Date of Birth? Answer: October 31, 1913. Age nearest birthday? Answer: 19 years. The actual date of birth is October 31, 1910, and his actual age was 22 years.

"In Part A of said application the following questions appear: "Occupation? If more than one, state all. Nature of employer's business." Answered: "Student, Hyde Park High School." "Exact duties of occupation?" Answer: "Studying." "Former occupations within the last ten (10) years?" Answer: "None."

"James Watson, the insured, instead of being a student at Hyde Park High School had been in the State Reformatory at Pontiac from December 20, 1928 to February 4, 1933, for the crime of robbery, and at the time the application was signed, he was on probation from said Reformatory. It is conceded that he had never been a student at Hyde Park High School. If the defendant insurance company had known of the true facts it would never have issued said policy.

"On June 29, 1933, James Watson was killed in an attempted robbery and the coroner's jury returned a verdict of justifiable homicide.

"The premiums paid in are in the sum of \$8.34 which sum has already been tendered to the plaintiff and refused and which sum is hereby tendered by this defendant to this plaintiff in full satisfaction of all claims and demands of every kind and nature against this defendant."

"Statement of facts in brief submitted to the Court on August 27, 1934, by David J. Maddox, attorney for the plaintiff, Fannie Watson, beneficiary of James Watson, Deceased:

"Lee Phillips, local agent of the Metropolitan Life Insurance Company, of New York, solicited and wrote an application for an insurance policy of \$1000.00 on the life of James Watson, of 11408 S. Loomis Street, Chicago, Illinois, on the 9th day of February, 1933; that the semi-annual premium of \$8.34 was paid, that on the 15th day of February, 1933, the policy was issued by the home office in New York, and delivered to the applicant in Chicago, Illinois; that on the 29th day of June, 1933, the insured came to his death by gun shot wounds; that due proofs of death and beneficial interest was made and submitted to the home office, in New York; that at the time that the application was made the applicant had served a term in the Illinois State Reformatory, for boys, at Pontiac, Illinois, which facts were communicated to agent Lee Phillips at the time he was soliciting the application; that after proof of death was submitted to the home office, the home office ordered an investigation, and as a result of said investigation, agent Lee Phillips was dismissed from the employ of the defendant insurance company, and payment on the policy was rejected, and an offer made to return the premium paid. Plaintiff, Fannie Watson, as beneficiary, brought suit for the face

100-443887-1000

THE ABOVE INFORMATION WAS OBTAINED FROM THE FILES OF THE
FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D. C.
ON JANUARY 10, 1961, BY SPECIAL AGENT IN CHARGE,
NEW YORK OFFICE, AND IS BEING FURNISHED TO YOU FOR
YOUR INFORMATION.

[illegible]

"The above information was obtained from the files of the
 FBI, New York Office, and is being furnished to you for your
 information. It is not to be used for any other purpose.
 Sincerely,
 J. Edgar Hoover
 Director

[illegible]

100-443886-100

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is active in the United States or whether it is merely a propaganda organization.

RECEIVED
JAN 10 1968

THE POLICY AND PRACTICE OF THE UNITED STATES IN THE
MIDDLE EAST, 1914-1918, by J. M. GORDON, Ph.D.
New York: Oxford University Press, 1968. Pp. 312.
\$12.50. (Hb.)

value of the policy, and the defendant set up the defense of misrepresentation and concealment of facts material to the risk, as to occupation, by the insured in part "A" of the application. The application was written and the questions asked and answered in the presence of Mrs. Fannie Watson, her sister, and mother of applicant and Mrs. Verna Daniels.

"The defendant offered the testimony of Leo Phillips, the discredited and dismissed agent, that he wrote the answers to question in part "A" of the application blank as they were given to him by the applicant and that the applicant stated that his occupation was a student studying at the Hyde Park High School, in Chicago, and that he was not informed that the applicant had served a term in the Illinois Reformatory, for boys, at Pontiac, Illinois, and was on parole.

"The plaintiff offered the testimony of herself and Mrs. Verna Daniels, her daughter, to show that they were present at the time that the application was solicited and written, and that the applicant informed the agent, Leo Phillips, in their presence that he had just returned from the Illinois State Reformatory at Pontiac, Illinois, where he had served a sentence, being charged with a crime of which he was not guilty and his lawyer had forced him to plead guilty, in order to get out on parole, and that he had no money to pay the premium on a policy because he was unemployed, and that applicant informed the agent that he finished school while there and showed the agent his diploma and that the agent replied, that is all right, that won't affect your insurance, let me write you up, and after more than an hour's persuasion and talk, and the applicant continuing to assure the agent that he did not have the money to pay the first premium on the policy, the agent, Leo Phillips, turned to Fannie Watson, the mother and asked her if she would pay the first premium on a policy for the applicant? After some discussion she agreed to pay the premium on a \$500.00 insurance policy for the applicant, but the agent insisted that she pay for a \$1000.00 policy since it was but a very little more and would give her twice the amount of protection, she was convinced and paid for the \$1000.00 policy then the agent asked the applicant his age and full name and wrote that in Part "A" of the application blank, and asked the applicant to sign the application blank, saying that he would fill in the other later that he had all of the facts, and applicant signed without reading or hearing the questions read.

"On May 29th 1934, Leo Phillips appeared in Court to testify in behalf of the plaintiff and stated upon being interrogated in the presence of the plaintiff and Mrs. Verna Daniels by the attorney for plaintiff, relative to the application, that the insured stated all the facts to him about being in Pontiac Reformatory and that the only school mentioned by the applicant was the one on the diploma that the applicant showed him at the time the application was written, and that he wrote Hyde Park High School in the application blank after he left the home of the applicant, and ended by saying what difference does it make, anyway the company knows that school means a vocation and not an occupation, this is the loudest deal I ever saw."

The bill of exceptions then shows that at a session of the court held October 15, 1934, the following occurred:

"The Court: Everything is stipulated here, as to the facts in the case, excepting one thing. They say that he was not a high school student. The matter came up before me and I heard your argu-

[illegible]

1. The following information was obtained from the records of the Federal Bureau of Investigation, New York City, New York, dated 10/10/50, and 10/11/50, and 10/12/50, and 10/13/50, and 10/14/50, and 10/15/50, and 10/16/50, and 10/17/50, and 10/18/50, and 10/19/50, and 10/20/50, and 10/21/50, and 10/22/50, and 10/23/50, and 10/24/50, and 10/25/50, and 10/26/50, and 10/27/50, and 10/28/50, and 10/29/50, and 10/30/50, and 10/31/50, and 11/1/50, and 11/2/50, and 11/3/50, and 11/4/50, and 11/5/50, and 11/6/50, and 11/7/50, and 11/8/50, and 11/9/50, and 11/10/50, and 11/11/50, and 11/12/50, and 11/13/50, and 11/14/50, and 11/15/50, and 11/16/50, and 11/17/50, and 11/18/50, and 11/19/50, and 11/20/50, and 11/21/50, and 11/22/50, and 11/23/50, and 11/24/50, and 11/25/50, and 11/26/50, and 11/27/50, and 11/28/50, and 11/29/50, and 11/30/50, and 12/1/50, and 12/2/50, and 12/3/50, and 12/4/50, and 12/5/50, and 12/6/50, and 12/7/50, and 12/8/50, and 12/9/50, and 12/10/50, and 12/11/50, and 12/12/50, and 12/13/50, and 12/14/50, and 12/15/50, and 12/16/50, and 12/17/50, and 12/18/50, and 12/19/50, and 12/20/50, and 12/21/50, and 12/22/50, and 12/23/50, and 12/24/50, and 12/25/50, and 12/26/50, and 12/27/50, and 12/28/50, and 12/29/50, and 12/30/50, and 12/31/50, and 1/1/51, and 1/2/51, and 1/3/51, and 1/4/51, and 1/5/51, and 1/6/51, and 1/7/51, and 1/8/51, and 1/9/51, and 1/10/51, and 1/11/51, and 1/12/51, and 1/13/51, and 1/14/51, and 1/15/51, and 1/16/51, and 1/17/51, and 1/18/51, and 1/19/51, and 1/20/51, and 1/21/51, and 1/22/51, and 1/23/51, and 1/24/51, and 1/25/51, and 1/26/51, and 1/27/51, and 1/28/51, and 1/29/51, and 1/30/51, and 1/31/51, and 2/1/51, and 2/2/51, and 2/3/51, and 2/4/51, and 2/5/51, and 2/6/51, and 2/7/51, and 2/8/51, and 2/9/51, and 2/10/51, and 2/11/51, and 2/12/51, and 2/13/51, and 2/14/51, and 2/15/51, and 2/16/51, and 2/17/51, and 2/18/51, and 2/19/51, and 2/20/51, and 2/21/51, and 2/22/51, and 2/23/51, and 2/24/51, and 2/25/51, and 2/26/51, and 2/27/51, and 2/28/51, and 2/29/51, and 2/30/51, and 3/1/51, and 3/2/51, and 3/3/51, and 3/4/51, and 3/5/51, and 3/6/51, and 3/7/51, and 3/8/51, and 3/9/51, and 3/10/51, and 3/11/51, and 3/12/51, and 3/13/51, and 3/14/51, and 3/15/51, and 3/16/51, and 3/17/51, and 3/18/51, and 3/19/51, and 3/20/51, and 3/21/51, and 3/22/51, and 3/23/51, and 3/24/51, and 3/25/51, and 3/26/51, and 3/27/51, and 3/28/51, and 3/29/51, and 3/30/51, and 3/31/51, and 4/1/51, and 4/2/51, and 4/3/51, and 4/4/51, and 4/5/51, and 4/6/51, and 4/7/51, and 4/8/51, and 4/9/51, and 4/10/51, and 4/11/51, and 4/12/51, and 4/13/51, and 4/14/51, and 4/15/51, and 4/16/51, and 4/17/51, and 4/18/51, and 4/19/51, and 4/20/51, and 4/21/51, and 4/22/51, and 4/23/51, and 4/24/51, and 4/25/51, and 4/26/51, and 4/27/51, and 4/28/51, and 4/29/51, and 4/30/51, and 5/1/51, and 5/2/51, and 5/3/51, and 5/4/51, and 5/5/51, and 5/6/51, and 5/7/51, and 5/8/51, and 5/9/51, and 5/10/51, and 5/11/51, and 5/12/51, and 5/13/51, and 5/14/51, and 5/15/51, and 5/16/51, and 5/17/51, and 5/18/51, and 5/19/51, and 5/20/51, and 5/21/51, and 5/22/51, and 5/23/51, and 5/24/51, and 5/25/51, and 5/26/51, and 5/27/51, and 5/28/51, and 5/29/51, and 5/30/51, and 5/31/51, and 6/1/51, and 6/2/51, and 6/3/51, and 6/4/51, and 6/5/51, and 6/6/51, and 6/7/51, and 6/8/51, and 6/9/51, and 6/10/51, and 6/11/51, and 6/12/51, and 6/13/51, and 6/14/51, and 6/15/51, and 6/16/51, and 6/17/51, and 6/18/51, and 6/19/51, and 6/20/51, and 6/21/51, and 6/22/51, and 6/23/51, and 6/24/51, and 6/25/51, and 6/26/51, and 6/27/51, and 6/28/51, and 6/29/51, and 6/30/51, and 7/1/51, and 7/2/51, and 7/3/51, and 7/4/51, and 7/5/51, and 7/6/51, and 7/7/51, and 7/8/51, and 7/9/51, and 7/10/51, and 7/11/51, and 7/12/51, and 7/13/51, and 7/14/51, and 7/15/51, and 7/16/51, and 7/17/51, and 7/18/51, and 7/19/51, and 7/20/51, and 7/21/51, and 7/22/51, and 7/23/51, and 7/24/51, and 7/25/51, and 7/26/51, and 7/27/51, and 7/28/51, and 7/29/51, and 7/30/51, and 7/31/51, and 8/1/51, and 8/2/51, and 8/3/51, and 8/4/51, and 8/5/51, and 8/6/51, and 8/7/51, and 8/8/51, and 8/9/51, and 8/10/51, and 8/11/51, and 8/12/51, and 8/13/51, and 8/14/51, and 8/15/51, and 8/16/51, and 8/17/51, and 8/18/51, and 8/19/51, and 8/20/51, and 8/21/51, and 8/22/51, and 8/23/51, and 8/24/51, and 8/25/51, and 8/26/51, and 8/27/51, and 8/28/51, and 8/29/51, and 8/30/51, and 8/31/51, and 9/1/51, and 9/2/51, and 9/3/51, and 9/4/51, and 9/5/51, and 9/6/51, and 9/7/51, and 9/8/51, and 9/9/51, and 9/10/51, and 9/11/51, and 9/12/51, and 9/13/51, and 9/14/51, and 9/15/51, and 9/16/51, and 9/17/51, and 9/18/51, and 9/19/51, and 9/20/51, and 9/21/51, and 9/22/51, and 9/23/51, and 9/24/51, and 9/25/51, and 9/26/51, and 9/27/51, and 9/28/51, and 9/29/51, and 9/30/51, and 10/1/51, and 10/2/51, and 10/3/51, and 10/4/51, and 10/5/51, and 10/6/51, and 10/7/51, and 10/8/51, and 10/9/51, and 10/10/51, and 10/11/51, and 10/12/51, and 10/13/51, and 10/14/51, and 10/15/51, and 10/16/51, and 10/17/51, and 10/18/51, and 10/19/51, and 10/20/51, and 10/21/51, and 10/22/51, and 10/23/51, and 10/24/51, and 10/25/51, and 10/26/51, and 10/27/51, and 10/28/51, and 10/29/51, and 10/30/51, and 10/31/51, and 11/1/51, and 11/2/51, and 11/3/51, and 11/4/51, and 11/5/51, and 11/6/51, and 11/7/51, and 11/8/51, and 11/9/51, and 11/10/51, and 11/11/51, and 11/12/51, and 11/13/51, and 11/14/51, and 11/15/51, and 11/16/51, and 11/17

the other I got that he had all of the money, and applied money
application to him the application being, saying that he would still be
were that in fact "of the so-called black, and that the
which then the agent asked the applicant his age and tall and
taller at present, and was advised and said for the \$100.00
amount it was paid a very little more and would give me some
application, but the agent insisted that was not a very
agreed to pay the premium on a \$500.00 insurance policy for the
amount on a policy for the applicant. That same day the
policy agent, the agent said that in fact would pay the
the first premium on the policy, but the agent, saying, he
considered as security the amount that he did have the money to pay
other more than an agent's premium and said, and the agent
right, that agent's own insurance, for he was not a
showed the agent his license and was agent registered, and in
the agent insisted the agent that he insisted on the policy and
was the premium on a policy because he was under 21, and that
policy, in order to get out on parole, and that he had no money to
of which he was not paying and the agent was taking him to court
Illinois, where he had never, a partner, being engaged with a young
and that was named from the Illinois State Automobile Insurance
company, where the agent, Lee Miller, in fact, because that
time that the application was received was accepted, and that the
Young, Miller, was brought, in fact that they were named as the
"The applicant stated the condition of parole if he was

[illegible]

THIS CASE WILL BE CLOSED IN 30 DAYS UNLESS MORE INFORMATION IS FILED BY 11/16/87

Information received from all 10 of the 11 studies

1. The Board of Directors is authorized to issue up to 10,000,000 shares of common stock, \$0.001 per share, for the purpose of raising capital for the corporation.

ment about it. Then something was said about your offer in evidence to show that the agent knew that he was not a high school student, and that he told -- the agent knew he was an ex-convict.

"Mr. Maddox (attorney for plaintiff): That is right.

"The Court: Then I allowed them (defendant) to take this deposition. I don't think it makes so much difference with me about this case. I don't think you have got quite as good a record in the case if you go up, for me to rule the way that you ask me to here, as you would the way I have ruled. They have got their deposition, and I wouldn't know what he said.

"Mr. Maddox: Well, your Honor.

"The Court: What did he say in his deposition? I don't think the representation he was a high-school student is material, so that dispenses with that. You can offer your deposition into the record. I will sustain the objection to it. You can read the depositions into your record."

It is evident that the bill of exceptions does not show all that transpired before the trial court. It sufficiently appears, however, that defendant did not stipulate that plaintiff's statement of facts as to what occurred at the time of the signing of the application was correct, and that the court allowed defendant to take the deposition of Lee Phillips in reference to the disputed question. When, finally, the case was again called for hearing, neither plaintiff nor her daughter testified and plaintiff offered no evidence on the subject of what transpired at the time of the signing of the application. Defendant offered the deposition of Phillips. The trial court sustained plaintiff's objection to its introduction but allowed it to be read into the record. Phillips testified - in the deposition - that he called at the home of Fannie Watson to collect certain industrial policy premiums that were due upon six industrial policies that had been issued by defendant company to members of the Watson family; that he there saw a young man whom he had never seen before and asked Mrs. Watson who he was; that she replied that he was her son James; that he asked James to take out a policy in defendant company, and after some conversation and sales talk he succeeded in getting James' permission to make out an application for

insurance; that he, the witness, filled out the application blank; that James furnished the answers and the witness wrote them down as given; that he had no reason to doubt the truth of the statements made by James; that the latter never told him that he had been accused of crime, and that Fennie Watson never gave him any information in reference to the same; that James, at the time, did not inform him that he had been confined in the Illinois State Reformatory for Boys, at Pontiac, nor did the mother inform him of such fact; that the mother confirmed James' statement that he was a high school student; that he, the witness, had no knowledge, at the time of the making out of the application, that Watson had served time in the Illinois State Reformatory. Attached to the deposition of Phillips were photostatic copies of the application, the medical examination, and the report made by Phillips to defendant after the application had been signed. Plaintiff strenuously contends that certain answers made by Phillips in that report show conclusively that his testimony given in the deposition upon the disputed question was false, but in our view of this appeal we are not called upon to pass upon that contention.

Defendant states its theory of the case as follows:

"The defendant's theory of the case is that false statements of material facts with reference to applicant's occupation were made in the application and that if the true facts were stated by James Watson in his application for the policy sued upon, it would not have been issued by the defendant. The policy is void and the sole liability of the defendant is for the premiums paid which were tendered to the plaintiff and by her refused.

"The plaintiff sought to inject the elements of knowledge and waiver on the part of the defendant's agent, into the case but the statement of claim alleged no such knowledge and there was absolutely no evidence to support it. The facts shown by the evidence are that the agent did not know the true facts as to the applicant's former conviction for robbery."

As to defendant's contention that the alleged waiver by the agent of defendant was not set forth in plaintiff's statement of claim and that therefore no recovery could be had on that ground, it is sufficient to say that in actions of the fourth class in the Municipal court of

Chicago the pleadings are not controlling and that the rights of the parties are dependent upon the evidence adduced at the trial.

So far as the record shows, there is but one theory of fact upon which plaintiff can recover in this case, viz., that the insured made true answers to the questions in the application for insurance and that false answers were inserted in the application by Leo Phillips, the agent of the defendant company. The record shows that plaintiff introduced no evidence to support this theory of fact and plaintiff is forced to the position that her statement of facts submitted to the court was accepted by defendant "without reservation or objection," but the record does not support this claim. On the contrary, it shows that the trial court recognized that the parties agreed upon all of the material facts save one, viz., what occurred at the time of the signing of the application.

From a careful reading of the bill of exceptions we are satisfied that this case was tried in a most unsatisfactory way and that justice will be best served by a retrial of it. In fairness to the trial court it must be stated that he heard part of the case on August 21, 1934, part of it on October 10, 1934, that the statements of facts were submitted on August 27, 1934, and that the reversal of the judgment is, in the main, the result of the manner in which the case was presented to him by the counsel. If, in the next trial, plaintiff relies upon the same theory of fact in respect to the signing of the application, the deposition of Phillips will, of course, be competent.

The judgment of the Municipal court of Chicago is reversed and the cause is remanded for a new trial.

JUDGMENT REVERSED AND CAUSE REMANDED
FOR A NEW TRIAL.

Sullivan and Friend, JJ., concur.

Chicago the plaintiff was not controlling and that the rights of
the parties are dependent upon the evidence adduced at the trial.
So far as the record shows, there is not one shadow of fact upon
which plaintiff's case can be sustained in this case, viz., that the
facts stated in the petition are the facts in the application for
and that the facts stated were known to the plaintiff at the
time, the facts of the defendant's company. The record shows that
plaintiff introduced no evidence to support the theory of fact and
plaintiff is bound to the position that the defendant of fact and
that in the facts was supported by defendant's position
or objection. But the record does not support this claim. On the
contrary, it shows that the facts were not established that the parties
agreed upon all of the material facts and that, viz., that occurred
at the time of the signing of the application.

From a careful reading of the bill of exchange to the
plaintiff it is seen that this was filed in a most unnecessary way and
that the facts will be made known by a review of it. In February
to the trial court it must be stated that the facts of the case
on August 11, 1900, part of it on October 11, 1900, that the facts
were of fact were established on August 11, 1900, and that the facts
of the plaintiff is, in the main, the result of the record in
which the case was presented to me by the court. It, in fact, was
trial, plaintiff's theory upon the facts of fact in regard to
the signing of the application, the deposition of William Hall, et
al., as witnesses.

The judgment of the Municipal Court at Chicago is reversed
and the case is remanded for a new trial.

THOMAS M. SWANSON, JUDGE
CITY OF CHICAGO

38032

DAVID H. LENTZ and
ROBERT J. JOUTRAS,
Appellees.

v.

MILLER RUBBER PRODUCTS
COMPANY, a corporation,
Appellant.

12 H
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

282 I.A. 622

MR. PRESIDING JUSTICE SCANLAN DELIVERED THE OPINION OF THE COURT.

Plaintiffs sued defendant Miller Rubber Products Company, a corporation, in the Superior court of Cook county, to recover commissions alleged to be due them "under the terms of the tripartite contract between plaintiffs, defendant, and the Goodlawn Service Company." After defendant Miller Rubber Products Company (hereinafter called Miller Company) had filed an amended answer to the complaint, plaintiffs moved the court to enter judgment in their favor and against said defendant in the sum of \$3,515, upon the ground that said sum "appears to be due from the admissions contained in the answer of the defendant." The judgment order entered upon the motion contains the following:

"On this day came the plaintiffs to this suit by their attorney and on motion of plaintiffs attorney it is ordered that a summary judgment be and the same is hereby entered herein in favor of the plaintiffs and against the defendant for the sum of One Thousand Two Hundred Eighty Five Dollars and twenty cents which the Court finds due on the pleadings of the defendant filed in this cause. * * *

Just prior to the entry of judgment an order was entered allowing Goodlawn Service Company (hereinafter called Service Company) to intervene as a defendant. Miller Company appeals, and complains that the judgment entered upon the pleadings was improper, as the answer set up several good defenses to the claim.

THE UNITED STATES OF AMERICA

IN SENATE

888 I.A. 888

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA
DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA DEPARTMENT OF JUSTICE

When the entire amended answer is considered in connection with plaintiffs' complaint, we are of the opinion that the judgment cannot be justified upon the theory or admissions contained in the answer, nor upon any other ground. Miller Company admits a contract with plaintiffs and that it sold to Service Company, intervening defendant, certain rain coats thereunder, and that it credited certain amounts to the account of plaintiff Joutres and also certain amounts to the account of plaintiff Lentz, but the answer alleges that it entered into the contract with plaintiffs because of certain false and fraudulent representations made by plaintiffs to defendant and that the contract was therefore void. It also alleges that Service Company has notified it that the tripartite contract was null and void because it was entered into by the Service Company because of false and fraudulent representations made by plaintiffs to it, and that it has demanded of Miller/^{Company} the return of all sums that have been paid by Woodlawn Service Company, a corporation, to this defendant on account of said alleged commissions on the grounds that the said plaintiffs or either of them were not entitled to receive the same because of the false representations and lack of consideration heretofore set forth." In this court plaintiffs question the right of Service Company to intervene as a defendant in the cause, but the trial court, just prior to the entry of the instant judgment, granted leave to Service Company to intervene, and there is nothing in the record to indicate that plaintiffs made any objection to the entry of that order and the Service Company is not a party to this appeal.

In this court plaintiffs argue, at some length, that the judgment should be sustained because of alleged defects in the answer. Section 45 of the Civil Practice act provides:

"(1) All objections to pleadings heretofore raised by demurrer shall be raised by motion. Such motion shall point out specifically the defects complained of, and shall ask for such relief as the nature of the defects may make appropriate, such

as the dismissal of the motion or the entry of a judgment where a pleading is substantially insufficient in law, or that a pleading be made more definite and certain in a specified particular, or that designated immaterial matter be stricken out, or that necessary parties be added, or that designated disjunct parties be dismissed, and so forth.

"(2) Where a pleading or a division thereof is objected to by a motion to dismiss as far judgment or to strike out the pleading, because it is substantially insufficient in law, the motion must specify wherein such pleading or division thereof is insufficient.

"* * *

No motion to strike the amended answer was made by plaintiffs, and their motion for judgment because of alleged admissions in the answer did not specify any alleged defects, in substance or form, in the answer. Subsection 2 of section 42 of the Civil Practice act provides:

"* * * (2) No pleading shall be deemed bad in substance which shall contain such information as shall reasonably inform the opposite party of the nature of the claim or defense which he is called upon to meet. * * *

The amended answer informs plaintiffs that defendant claims that the contract was void because it was induced by fraudulent representations on the part of plaintiffs. Had plaintiffs, in the trial court, in a proper way specified the alleged defects in the answer, that they now urge, defendant Miller Company if it were necessary, might readily have cured the same.

The judgment of the Superior court of Cook county is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

JUDGMENT REVERSED AND CAUSE
REMANDED FOR FURTHER PROCEEDINGS.

Sullivan and Friend, JJ., concur.

37761

FOREMAN STATE TRUST AND SAVINGS
BANK et al.,

Complainants,

v.

VICTOR C. CARLSON et al.,
Defendants.

On appeal of FRANK C. RATHJE,
successor trustee under indenture
of trust between A. G. Becker & Co.
and Foreman Trust and Savings Bank,
trustee,

Complainant-Appellant,

v.

FIRST NATIONAL BANK OF CHICAGO,
Defendant-Appellee.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

2021 A. 622

MR. JUSTICE FRIEND DELIVERED THE OPINION OF THE COURT.

Frank C. Rathje, successor trustee under an indenture of trust between A. G. Becker & Co. and the Foreman Trust & Savings Bank, trustee, prosecutes this appeal from a foreclosure decree entered in the circuit court allowing the First National Bank of Chicago, one of the defendants, a lien on a parity with complainant as to one of four notes securing the issue, acquired by First National Bank through purchase from Foreman Trust & Savings Bank.

It appears that in August, 1927, an indenture of trust was made between A. G. Becker & Co. and the Foreman Trust & Savings Bank, trustee, creating what is hereinafter referred to as the "Becker Trust," whereby A. G. Becker & Co. assigned to the Foreman Bank, as trustee, \$6,000,000 of first mortgages securing principal and interest notes for which the trustee issued certificates of

1276

WOMANLY TRUST AND SAVINGS
BANK OF ALA.,
Mobile, Ala.

VICTOR G. BARNES OF ALA.,
Mobile, Ala.

On appeal of VICTOR G. BARNES,
appellee, against Walter Jackson
of Trust between A. G. Barker & Co.,
and Womanly Trust and Savings Bank,
appellee.

VICTOR G. BARNES OF ALA.,
Mobile, Ala.

NO. 1276 TRUSTS BELONGING TO THE COURT.

WALTER G. BARNES, appellee, against Walter Jackson

of Trust between A. G. Barker & Co. and the Womanly Trust &
Savings Bank, appellee, petitioner. This appeal from a decree
entered in the circuit court allowing the Trust National
Bank of Chicago, one of the defendants, a lien on a party with
emphasis on an act of law which occurred in the same, requiring
by Trust National Bank through purchase from Womanly Trust &
Savings Bank.

It appears that in August, 1927, an inventory of trust
was made between A. G. Barker & Co. and the Womanly Trust & Savings
Bank, trustee, showing that in certain entries in the
"Barker Trust," which A. G. Barker & Co. assigned to the Womanly
Trust, as trustee, \$5,000.00 of trust monies were being retained
and interest thereon was being paid to the trustee.

beneficial interest known as first mortgage participation certificates. These were sold to the public and the income realized therefrom was assigned to the trustee to be distributed to the holders of said certificates.

Among the \$6,000,000 of first mortgages was a trust deed dated November 26, 1927, from Victor C. Carlson and wife to Foreman Trust & Savings Bank, as trustee, conveying real estate in Cook county, securing four principal notes, aggregating \$350,000. The first two notes, for \$20,000 each, note No. 3 for \$30,000, and note No. 4 for \$280,000, became due respectively in two, three, four and five years after date, and were payable at the Foreman Trust & Savings Bank.

In 1929 Foreman Trust & Savings Bank was consolidated with State Bank of Chicago, and thereafter was known as Foreman-State Trust & Savings Bank, and became successor in trust under the Becker trust and the Carlson trust deed.

September 25, 1931, the consolidated bank, as trustee, filed its bill of complaint in the circuit court to foreclose the Carlson trust deed, which was subsequently amended, and alleged in substance that November 26, 1930, principal note No. 2, for \$20,000, became due by its terms, and was on that date held and owned by Foreman-State Trust & Savings Bank, as trustee of the Becker trust, who delivered said note to the real estate loan department of said bank for collection and received the amount due thereon; that the bank, as trustee under the Becker trust, was given no notice as to who furnished the money to make such payment, nor did they have any knowledge in regard thereto, nor was any notice given to any of the beneficiaries under said trust in regard to said payment, and that by virtue of said transaction principal note No. 2 became subordinated to the lien of the other three notes, together with interest thereon, from November 26, 1930; that

upon the transfer of principal note No. 2 to the Foreman-State Trust & Savings Bank, in its individual capacity, said bank entered into an agreement with the Lake View Trust & Savings Bank, as trustee, who was then the record owner of the premises described in the trust deed, extending the time of payment of note No. 2 to November 26, 1932, with interest at 6% per annum, as evidenced by extension interest coupons.

August 16, 1932, the First Union Trust & Savings Bank filed its answer, averring that it was the owner of note No. 2 and denying that said note and extension interest coupons became subordinated to the lien of the other three notes, and praying parity with the notes held by complainant.

February 5, 1934, the amended supplemental answer of the First National Bank of Chicago was filed, alleging its consolidation and merger with the First Union Trust & Savings Bank July 17, 1933, and claiming the rights of the First Union Trust & Savings Bank in note No. 2 and extension interest coupons. The answer admits all the allegations contained in the original bill of complaint, but denies that note No. 2 was subordinated by its transfer from the Foreman-State Trust & Savings Bank, as trustee of the Becker trust to the bank, individually, and avers that Foreman-State Trust & Savings Bank purchased note No. 2 at its maturity for a valuable consideration and that First Union Trust & Savings Bank purchased said note from Foreman-State Trust & Savings Bank for a valuable consideration, without notice that it had been purchased by Foreman-State Trust & Savings Bank, individually, from itself as trustee. The answer further averred that First Union Trust & Savings Bank is the legal owner and holder of said note and interest coupons, as extended, and that the lien of said note No. 2 was on a parity with the lien claimed by complainant.

July 12, 1933, Foreman-State Trust & Savings Bank was

upon the transfer of principal note No. 2 to the Farmers-Trust
Trust & Savings Bank, in the individual capacity, said bank delivered
into an agreement with the bank then known as Savings Bank, as
trustee, who had then the custody of the principal delivered in
the bank name, enclosing the list of payment of note No. 2 to
November 22, 1922, with interest at 6% per annum, as evidenced by
separate interest coupons.

January 12, 1923, the First Union Trust & Savings Bank
filed its answer, averring that it was the owner of note No. 2
and denying that said note and extension interest coupons became
surrendered on the list of the other three notes, and paying
fully with the notes held by complainant.

February 2, 1924, the amended answer of
the First National Bank of Chicago was filed, alleging the con-
solidation and merger with the First Union Trust & Savings Bank
July 17, 1923, and claiming the rights of the First Union Trust
& Savings Bank in note No. 2 and extension interest coupons. The
answer admits all the allegations contained in the original bill
of complaint, but denies that note No. 2 was surrendered by the
complainant from the Farmers-Trust & Savings Bank, as provided
at the back thereof on the back, indistinctly, and avers that

Farmers-Trust Trust & Savings Bank purchased note No. 2 of the
complainant for a valuable consideration and that First Union Trust &
Savings Bank purchased said note from Farmers-Trust Trust & Savings
Bank for a valuable consideration, without notice that it had been
purchased by Farmers-Trust Trust & Savings Bank, indistinctly, from
First Union Trust. The answer further avers that First Union
Trust & Savings Bank is the legal owner and holder of said note
and interest coupons, as aforesaid, and that the list of said note
and interest coupons is a forgery and the list claimed by complainant.
July 12, 1924, Farmers-Trust Trust & Savings Bank was

removed as trustee of the Becker trust by a decree entered in the superior court of Cook county, and Frank C. Rathje was appointed successor trustee.

Upon these pleadings the cause was referred to a master in chancery of the circuit court, who found that on November 26, 1930, the Foreman bank, as trustee of the Becker trust, was the owner of note No. 2; that on said date, as such trustee, it delivered note No. 2 to the real estate loan department of the Foreman bank for collection and received the amount due thereon; that as such trustee it was given no notice as to who furnished the money for such payment, nor did it have any knowledge in regard thereto, except such as might be inferred from receipt of such money from the paying agent, nor was any notice given to any beneficiary under the indenture of trust in regard to said loan. That note No. 2 was still outstanding, but that the lien thereof was subordinated and subject to the lien of the complainant in said foreclosure proceeding.

Exceptions to the report were sustained by the court, and on May 28, 1934, a decree was entered finding among other things that note No. 2, which by its terms became due and payable on November 26, 1930, was on that date held and owned by Foreman-State Trust & Savings Bank, as trustee of the Becker trust; that on said date the bank, as trustee, delivered said note to the real estate loan department of the Foreman bank, who thereupon, in its individual capacity, transferred on its books to the credit of the Foreman bank, as trustee of the Becker trust, the sum of \$20,000, and placed said note No. 2 among its individual assets; that this transaction constituted a sale of such note from the Foreman bank, as trustee of the Becker trust, to the bank in its individual capacity; that the Foreman bank, as trustee, was placed on notice as to who furnished the money with which to make payment of said note, and that full and complete knowledge of the fact that the bank individually used its own funds

transferred as trustee of the Bankers Trust by a letter dated in the
 subject account of Bank account, and Frank A. Wells was appointed
 executor of the estate.
 Upon these findings the court was satisfied to a number
 in the history of the estate account, who found that on November 22,
 1937, the Farmers Bank, as trustee of the Bankers Trust, was the
 owner of note No. 2; that on said date, as was stated, it delivered
 note No. 2 to the Bankers Trust agreement of the Farmers Bank for
 collection and received the amount due thereon; that on such date
 it was given no notice as to who furnished the money for such payment,
 and did it have any knowledge as to who furnished the money? such as might
 be inferred from receipt of such money from the paying agent, nor was
 any notice given to any person or entity under the agreement of trust in
 regard to said loan. That note No. 1 was still dated 1937, but
 that the loan account was debited and subject to the lien of
 the completion in said Farmers' proceedings.
 Recollection to the court was furnished by the court,
 and on May 22, 1938, a decree was entered finding certain other things
 that note No. 2, which by the terms became due and payable on November
 22, 1937, was on that date held and owned by Farmers-Bank Trust A
 Farmers Bank, as trustee of the Bankers Trust; that on said date the
 bank, as trustee, delivered said note to the Bankers Trust agreement-
 bank, as trustee, who thereupon, in the ordinary course,
 transferred to the bank to the credit of the Farmers Bank, as
 trustee of the Bankers Trust, the sum of \$25,000, and placed said note
 No. 2 among the individual accounts; that this transaction constituted
 a sale of such note from the Farmers Bank, as trustee of the Bankers
 Trust, to the bank in the individual capacity; that the Farmers Bank,
 as trustee, was placed on notice as to who furnished the money for
 claim to such payment of said note, and that said bank was
 responsible at the time that the bank individually must be over looked

to purchase said note was attributable to the Foreman bank, as trustee of the Becker trust.

The decree further found that no notice was given to any beneficiary under the indenture of trust regarding the nature of the payment of note No. 2, and that such notice was not required in order to constitute a sale of said note; that note No. 2 was still outstanding, and that the lien thereof was on a parity with the lien asserted by complainant. From the foreclosure ordered by said decree, and the sale of the property to satisfy the parity liens of the First National Bank and Frank C. Bethje, as successor trustee, the latter prosecutes this appeal.

There is substantially no dispute as to the facts, which disclosed that the \$25,000 note was held by the bank as trustee of the Becker trust on the date of its maturity. By the terms of the note the bank individually was designated as the agent for payment. On the date the note matured it was sent from the trust department to the real estate loan department, which sent to the trust department a check covering the amount of the note, bearing no notation as to whether the real estate loan department had actually received payment from the makers, nor was any other notice given the trust department that the makers had not paid the note. There is evidence that it was customary for the real estate loan department to advance funds to cover maturing mortgage notes remitted to it at maturity by its investors, even though the real estate loan department had not received same from the makers of the maturing mortgage notes, but the trust department of the Foreman bank had no actual knowledge of this custom.

Under these circumstances, the principal question for determination as stated in both briefs and by counsel for the parties on oral argument is whether the transaction constituted payment of the note by the Foreman bank or a sale thereof by the bank as trustee in itself in an individual capacity. Authorities are in accord on the

10. The following information is for the year ended 31/12/2019:

NOTE: The above is a summary of the results of the study.

View of north side of tower on 2nd level, looking west. 45

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is assigned to the case. The investigator will then gather information about the problem and the people involved. This information will be used to develop a plan of action.

Abstract: This paper discusses the importance of the role of the state in the development of the economy. It argues that the state should play a leading role in the development of the economy, particularly in the areas of infrastructure, education, and health care. The paper also discusses the importance of the role of the private sector in the development of the economy, and the importance of the role of the international community in the development of the economy.

Approved for release by NSA on 08-25-2014 pursuant to E.O. 13526

and the role of the property in making the party known to the public.

11/10/2003 11:10:00 AM

Downloaded At: 11:52 11 September 2009

[illegible]

of knowledge about the world and its people, and the ability to apply this knowledge to solve problems.

[illegible]

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

1411

1974-1975 1976-1977 1978-1979 1980-1981 1982-1983 1984-1985 1986-1987 1988-1989 1990-1991 1992-1993 1994-1995 1996-1997 1998-1999 2000-2001 2002-2003 2004-2005 2006-2007 2008-2009 2010-2011 2012-2013 2014-2015 2016-2017 2018-2019 2020-2021 2022-2023 2024-2025 2026-2027 2028-2029 2030-2031 2032-2033 2034-2035 2036-2037 2038-2039 2040-2041 2042-2043 2044-2045 2046-2047 2048-2049 2050-2051 2052-2053 2054-2055 2056-2057 2058-2059 2060-2061 2062-2063 2064-2065 2066-2067 2068-2069 2070-2071 2072-2073 2074-2075 2076-2077 2078-2079 2080-2081 2082-2083 2084-2085 2086-2087 2088-2089 2090-2091 2092-2093 2094-2095 2096-2097 2098-2099 2100-2101 2102-2103 2104-2105 2106-2107 2108-2109 2110-2111 2112-2113 2114-2115 2116-2117 2118-2119 2120-2121 2122-2123 2124-2125 2126-2127 2128-2129 2130-2131 2132-2133 2134-2135 2136-2137 2138-2139 2140-2141 2142-2143 2144-2145 2146-2147 2148-2149 2150-2151 2152-2153 2154-2155 2156-2157 2158-2159 2160-2161 2162-2163 2164-2165 2166-2167 2168-2169 2170-2171 2172-2173 2174-2175 2176-2177 2178-2179 2180-2181 2182-2183 2184-2185 2186-2187 2188-2189 2190-2191 2192-2193 2194-2195 2196-2197 2198-2199 2200-2201 2202-2203 2204-2205 2206-2207 2208-2209 2210-2211 2212-2213 2214-2215 2216-2217 2218-2219 2220-2221 2222-2223 2224-2225 2226-2227 2228-2229 2230-2231 2232-2233 2234-2235 2236-2237 2238-2239 2240-2241 2242-2243 2244-2245 2246-2247 2248-2249 2250-2251 2252-2253 2254-2255 2256-2257 2258-2259 2260-2261 2262-2263 2264-2265 2266-2267 2268-2269 2270-2271 2272-2273 2274-2275 2276-2277 2278-2279 2280-2281 2282-2283 2284-2285 2286-2287 2288-2289 2290-2291 2292-2293 2294-2295 2296-2297 2298-2299 2300-2301 2302-2303 2304-2305 2306-2307 2308-2309 2310-2311 2312-2313 2314-2315 2316-2317 2318-2319 2320-2321 2322-2323 2324-2325 2326-2327 2328-2329 2330-2331 2332-2333 2334-2335 2336-2337 2338-2339 2340-2341 2342-2343 2344-2345 2346-2347 2348-2349 2350-2351 2352-2353 2354-2355 2356-2357 2358-2359 2360-2361 2362-2363 2364-2365 2366-2367 2368-2369 2370-2371 2372-2373 2374-2375 2376-2377 2378-2379 2380-2381 2382-2383 2384-2385 2386-2387 2388-2389 2390-2391 2392-2393 2394-2395 2396-2397 2398-2399 2400-2401 2402-2403 2404-2405 2406-2407 2408-2409 2410-2411 2412-2413 2414-2415 2416-2417 2418-2419 2420-2421 2422-2423 2424-2425 2426-2427 2428-2429 2430-2431 2432-2433 2434-2435 2436-2437 2438-2439 2440-2441 2442-2443 2444-2445 2446-2447 2448-2449 2450-2451 2452-2453 2454-2455 2456-2457 2458-2459 2460-2461 2462-2463 2464-2465 2466-2467 2468-2469 2470-2471 2472-2473 2474-2475 2476-2477 2478-2479 2480-2481 2482-2483 2484-2485 2486-2487 2488-2489 2490-2491 2492-2493 2494-2495 2496-2497 2498-2499 2500-2501 2502-2503 2504-2505 2506-2507 2508-2509 2510-2511 2512-2513 2514-2515 2516-2517 2518-2519 2520-2521 2522-2523 2524-2525 2526-2527 2528-2529 2530-2531 2532-2533 2534-2535 2536-2537 2538-2539 2540-2541 2542-2543 2544-2545 2546-2547 2548-2549 2550-2551 2552-2553 2554-2555 2556-2557 2558-2559 2560-2561 2562-2563 2564-2565 2566-2567 2568-2569 2570-2571 2572-2573 2574-2575 2576-2577 2578-2579 2580-2581 2582-2583 2584-2585 2586-2587 2588-2589 2590-2591 2592-2593 2594-2595 2596-2597 2598-2599 2600-2601 2602-2603 2604-2605 2606-2607 2608-2609 2610-2611 2612-2613 2614-2615 2616-2617 2618-2619 2620-2621 2622-2623 2624-2625 2626-2627 2628-2629 2630-2631 2632-2633 2634-2635 2636-2637 2638-2639 2640-2641 2642-2643 2644-2645 2646-2647 2648-2649 2650-2651 2652-2653 2654-2655 2656-2657 2658-2659 2660-2661 2662-2663 2664-2665 2666-2667 2668-2669 2670-2671 2672-2673 2674-2675 2676-2677 2678-2679 2680-2681 2682-2683 2684-2685 2686-2687 2688-2689 2690-2691 2692-2693 2694-2695 2696-2697 2698-2699 2700-2701 2702-2703 2704-2705 2706-2707 2708-2709 2710-2711 2712-2713 2714-2715 2716-2717 2718-2719 2720-2721 2722-2723 2724-2725 2726-2727 2728-2729 2730-2731 2732-2733 2734-2735 2736-2737 2738-2739 2740-2741 2742-2743 2744-2745 2746-2747 2748-2749 2750-2751 2752-2753 2754-2755 2756-2757 2758-2759 2760-2761 2762-2763 2764-2765 2766-2767 2768-2769 2770-2771 2772-2773 2774-2775 2776-2777 2778-2779 2780-2781 2782-2783 2784-2785 2786-2787 2788-2789 2790-2791 2792

proposition that the nature of the transaction resulting in the transfer of a mortgage note at maturity to the agent for payment must be determined from the facts surrounding such transfer which indicate the intention of the parties. (Farmers' Loan & Trust Co. v. Iowa Water Co., 78 Fed. 881; White v. Fisher, 63 Ill. 258.)

As bearing upon the question of intention, John W. Bissell, vice president of Foreman-State Trust & Savings Bank, testified, over the objection of counsel for the First National Bank, that the trust department had sent the note to the real estate and loan department for collection. However, there was no memorandum accompanying the note, nor any notation thereon to support this statement, which is at variance with the allegation in the verified amended bill of complaint, signed and sworn to by Bissell, that when "Principal note No. 2 became due on November 26, 1930, the same was purchased from your orator, as trustee, under said indenture of trust, by Foreman-State Bank & Trust Co. in its individual capacity." The amended and supplemental answer of the First National Bank avers that the note was purchased, and it has maintained that position throughout these proceedings. The record shows that the note was retained by the Foreman bank, uncanceled, and was not returned to the makers thereof. The master found that thereafter the Foreman bank, in its individual capacity, became the owner and holder of said note. In the exercise of its right of ownership, it immediately entered into an agreement with the Lake View Trust & Savings Bank, as trustee, for extending the principal and interest due on said note for a period of two years. It is difficult to understand why the real estate department of the Foreman bank should have paid the note, as the successor-trustee contends, thus destroying its parity and subordinating the lien thereof to the other three notes. It did not know whether the makers of the note would pay at maturity, and being designated merely as the paying agent, it was not obliged to

proposition that the nature of the transaction resulting in the transfer of a mortgage note as security to the agent for payment must be determined from the facts surrounding such transfer which indicate the intention of the parties. (Foreman, Loan & Trust Co. v. Iowa Water Co., 78 Fed. 881; White v. Fisher, 62 Ill. 288.)

As bearing upon the question of intention, John W. Binnsell, vice president of Foreman-State Trust & Savings Bank, testified, over the objection of counsel for the First National Bank, that the trust department had sent the note to the real estate and loan department for collection. However, there was no memorandum accompanying the note, nor any notation thereon to support this statement, which is at variance with the allegation in the verified amended bill of complaint, signed and sworn to by Binnsell, that when "Principal note No. 2 became due on November 20, 1920, the same was purchased from your estate, as trustee, under said indenture of trust, by Foreman-State Bank & Trust Co. in its individual capacity." The amended and supplemental answer of the First National Bank avers that the note was purchased, and it has maintained that position throughout these proceedings. The record shows that the note was retained by the Foreman bank, unencumbered, and was not returned to the maker thereof. The master found that thereafter the Foreman bank, in its individual capacity, became the owner and holder of said note. In the exercise of its right of ownership, it immediately entered into an agreement with the Lake View Trust & Savings Bank, as trustee, for extending the principal and interest due on said note for a period of two years. It is difficult to understand why the real estate department of the Foreman bank should have paid the note, as the successor-trustee contends, thus destroying its parity and subordinating the lien thereof to the other three notes. It did not know at that time the maker of the note would pay at maturity, and being designated merely as the paying agent, it was not obliged to

advance the money to the trustee in payment of the note until the makers thereof had deposited the funds with the real estate loan department as paying agent to take up the note at maturity. The logic of the situation does not sustain the successor-trustee's position. From all of these circumstances, we therefore conclude that the purchase of the note, as alleged by complainant, and the subsequent ownership thereof, as shown by the facts in the case, indicate that the transaction constituted a purchase and sale of the note rather than payment thereof.

Counsel for the successor-trustee argue that the note in question was delivered at maturity to an agent for payment, and cite authorities where the holders of notes had presented them for collection at the places designated for payment and received the money due thereon in the belief that the notes were being paid, or at least without notice that they were being purchased. While the doctrine enunciated in the cases cited is perfectly sound, it cannot well be applied to the facts before us. This transaction involved only one person, the Foreman bank, which held the note, drew the check, received the money and credited the account. That presents a situation unlike those in which one person holds the note, another the money with which the note is to be paid, and an exchange is made between the parties of the note for the money. In cases of that class courts have held that purchase of the note from a holder without his knowledge that it was being purchased, and under such circumstances that he had reasonable ground for believing that it was being paid, would result in payment and a subordination. The court by its decree in this case found that Foreman-State Trust & Savings Bank, as trustee of the Becker trust, was placed on notice as to who furnished the money with which to make the payment of the note, and that full and complete knowledge of the fact that the bank, individually, used its own funds to pay said note, is attributable

[illegible]

to the Foreman-State Trust & Savings Bank, as trustee. This finding is sustained by authority. Under modern practice banks are organized into various departments. The Foreman bank had a real estate loan department, a trust department, one for commercial accounts and perhaps others. In the eyes of the law notice to one department must be held to be notice to the others. Any other rule would result in confusion and permit an evasion of liability and responsibility. It was so held in Browning v. Fidelity Trust Co., 250 Fed. 321, where the court laid down the rule that there is an implication of notice between departments, and said (p. 324):

"On the bare question of knowledge we agree with the learned district judge that the trustee cannot thus divide itself into units or parts and cannot escape liability, when based upon knowledge, because one of its parts was without it while another possessed it. Clearly the knowledge of the paying teller that default had been made in the interest payments was knowledge chargeable to the corporation itself. This knowledge, if not actual in the sense of being complete in detail, was quite sufficient to put the corporation on inquiry, which, had it been made, would have revealed the actual default."

Under the terms of the Becker trust the trustee was vested with the broadest of authority. It was empowered to compromise and exchange securities, sell them and use the proceeds of any sale or payment in the purchase of others, extend the time of maturity and deal with securities as if it were the absolute and unqualified owner thereof. There was introduced in evidence by complainant a ledger sheet of the Foreman bank showing payment on November 26, 1930, for the note in question in the sum of \$20,000, together with \$0,000 interest on the entire mortgage. Under date of December 27, 1930, the same sheet shows the purchase of a \$20,000 note made by the Illinois Co-Operative Cleaners & Dyers Association. It is argued with considerable force that because of the short interval between these dates the two transactions should be considered as one, and that they constituted in fact an exchange of the Carlson note for that of the Cleaners & Dyers Association. It was within the power and authority of the trustee, as fixed in the trust indenture, to have

is the Government's view on this matter. This finding is sustained by authority. Under modern practice banks are organized into various departments. The Treasury bank has a well defined department, a credit department, and the commercial department and department, in the eyes of the law subject to the department which is held to be subject to the others. Any other rule would result in confusion and prevent an exercise of liability and responsibility. It was so held in Banking v. Bank, 100 Fed. 2d 101, where the court said that there is an implication of notice between departments, and said (p. 104):

"On the part of the Government we agree with the learned district judge that the various banks which have been established as public and private banks, which have been established, because one of the parties has without its written consent, the knowledge of the paying bank, which has been established in the Government's knowledge, it is not enough to be the Government's liability. This knowledge, it is not in the nature of being committed in itself, and it is not sufficient to put the Government on inquiry, which, but it does not, which have revealed the actual facts."

Under the terms of the Federal Trust the trustee was vested with the benefit of authority. It was necessary to communicate and exchange confidential, well known and use the proceeds of any sale or payment in the purchase of others, about the time of maturity and deal with securities as it is now the trustee and undivided owner thereof. There was introduced in evidence by complainant a ledger sheet of the Treasury bank showing payment on November 22, 1930, for the note in question in the sum of \$20,000, together with \$1,000 interest on the said mortgage. Under date of November 27, 1930, the same sheet shows the purchase of a \$20,000 note by the Illinois Co-operative Finance & Trust Association. It is a well established fact that because of the above stated fact there is no doubt that the Government should be considered as one, and that they are limited in fact as to the nature of the debt and the Government's liability. It is within the power and authority of the trustee, as filed in the present complaint, to have

made such an exchange, and no notice thereof was required to be given anyone.

Various other points are raised by counsel for both parties, including the question whether the First Union Trust & Savings Bank, having paid a valuable consideration for the note without any notice of defense thereto existing by reason of the facts surrounding its acquisition by the Foreman Bank, took the note free from any defenses which might exist thereto by reason of the purchase of the note, as we hold, by the Foreman bank individually from its trustee. Because of the conclusions reached, however, we regard it as unnecessary to discuss this and other questions. The pleadings and record indicate that the case was tried upon the theory that this was a purchase and sale, and we are of the opinion, as heretofore stated, that the circumstances are indicative of a purchase and sale between the parties rather than mere payment. The decree properly allowed the First National Bank a lien on a parity with complainant as to the other notes and is, therefore, affirmed.

AFFIRMED.

Scanlan, P. J., and Sullivan, J., concur.

[illegible][illegible]

...therefore, claimed
that a lien on a party with consideration as to the other not a lien
then was payment. The court further stated that it found
are indicative of a purchase and not payment for goods or
are of the opinion, as previously stated, that the circumstances
titled upon the theory that this was a purchase and not a
consideration. The findings and conclusions of the court are
however, we regard it as unnecessary to discuss this and other
individually from the findings. Because of the peculiar facts of

SECRET

CONFIDENTIAL

37776

PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

v.

DAVID PONDEXTER et al.,
Plaintiffs in Error.

14
ERROR TO CRIMINAL
COURT, COOK COUNTY.

282 I.A. 622

MR. JUSTICE FRIMM DELIVERED THE OPINION OF THE COURT.

An indictment consisting of 27 counts, returned to the July term, 1933, in the criminal court, charged defendants David Pondexter, Charles Hampton, Henry Gee, Jesse Smith, Delia Page and Mary Vernick, with conspiracy with persons unknown to commit assault with a deadly weapon against a large number of persons; with conspiracy to assemble to disturb the peace; to kill and murder said persons; to assault certain police officers; and to commit mayhem. The jury returned a verdict of guilty as to all the defendants and each was fined \$750 and sentenced to the penitentiary for a period not to exceed the maximum fixed by statute.

From a voluminous record containing the testimony of more than forty witnesses, it appears that January 27, 1933, between 11:00 and 11:30 in the forenoon, a mixed group of men and women, colored and white, some 150 or 200 in all, assembled in a vacant lot on the northeast corner of 50th place and Vincennes avenue, Chicago, directly across from the Oakwood relief station. The purpose of the meeting was to hear addresses by speakers there assigned and to appoint a committee to confer, present certain demands and set forth their grievances as to the supervision of the station. Many of these

1977

REPORT ON THE PROCEEDINGS OF THE
COMMISSION ON THE

REPORT ON THE PROCEEDINGS OF THE

REPORT ON THE PROCEEDINGS OF THE

1977

REPORT ON THE PROCEEDINGS OF THE
COMMISSION ON THE

REPORT ON THE PROCEEDINGS OF THE

An indictment consisting of 17 counts, returned to the

July term, 1977, in the criminal court, charged defendants David

Forester, Charles Forester, Henry Lee, Louis Smith, Louis Lee and Mary

Forester, with conspiracy with persons unknown to commit murder

with a deadly weapon against a large number of persons with con-

spiracy to commit to obstruct the peace, to kill and murder with

persons; to commit certain police officers; and to commit murder.

The jury returned a verdict of guilty as to all the defendants

and each was fined \$750 and sentenced to the penitentiary for a

period not to exceed the maximum time by statute.

From a voluminous record containing the testimony of many

other witnesses, it appears that between 1977, between 1977

and 1977 in the forenoon, a mixed group of men and women, colored

and white, some 100 or 200 in all, assembled in a vacant lot on the

northeast corner of 60th place and Wisconsin Avenue, Chicago, directly

across from the Chicago Field Station. The purpose of the meeting

was to have addressed by speakers these meetings and to organize a

committee to collect, present certain amounts and for their

reference as to the supervision of the station. Many of these

present, including one defendant, were clients of the station. The right of the Unemployed Council committees to visit relief stations and discuss problems affecting those whom the committees believed to be obtaining inadequate relief had been curtailed immediately prior to the date in question, and this, among other grievances, was one of the subjects to be discussed and presented to the supervisor through a committee of those assembled.

Notice of the meeting had been advertised generally throughout the neighborhood, and a large police detail in charge of Capt. James M. Mooney of the 5th police district was assigned to the relief station and vicinity. The police arrived early in the forenoon, and as the crowd assembled they were directed by the police onto a vacant lot to await the arrival of the speakers. A discussion was had between several of the workers and the police pertaining to arrangements for the meeting, and a chair was placed in the lot from which the speakers should address those assembled.

Inasmuch as this cause will have to be retried for the reasons hereinafter stated, it would be useless to review the evidence at length. It appears from the record that the demonstration was planned in advance and advertised by the distribution of circulars or slips, sponsored by the unemployed council. A prior demonstration had been averted by the police and several arrests were made. Speakers, including one or two of the defendants, had been invited to address the crowd. There is evidence tending to show that while David Pondexter, one of the defendants, was speaking, the police advanced toward him and ordered the crowd to disperse; that Pondexter was thereupon heard to say "Here comes the police. Give it to them;" whereupon various weapons were produced from the clothing and wraps of men and women in the crowd, with which the police officers were attacked. Capt. Mooney was struck over the head with an iron bar and a chair; Lieut. Middleton had red pepper

present, including one defendant, were seated at the table.
The right of the defendant to counsel was not waived.
evidence was taken from the defendant and the defendant
believed to be obtaining false evidence and was not
immediately prior to the date in question, and this, being after
evidence, was one of the subjects to be discussed and presented
to the jury through a committee of three members.
Notice of the meeting had been given to the jury
throughout the neighborhood, and a large police detail in charge
of Capt. James J. Henry of the 6th police district was assigned
to the relief station and vicinity. The police arrived early in
the morning, and as the crowd assembled, they were directed by the
police onto a vacant lot to await the arrival of the speaker. A
discussion was had between several of the authors and the police
pertaining to the speaker's use of the word "nigger", and a chair was placed
in the lot from which the speaker should address the crowd.
Inasmuch as this crowd will have to be relieved for the
speaker's statement, it would be advised to review the evi-
dence as found. It appears from the report that a demonstration
was planned in advance and arranged by the defendant at approx-
imately 11:00 a.m., sponsored by the defendant himself. A police demon-
stration had been ordered by the police and several arrests were
made. However, including one of two of the defendants, had been
invited to address the crowd. There is evidence tending to show
that while Davis testified, one of the defendants, was speaking, the
police advised Davis and ordered the crowd to disperse; that
testimony was that Davis had to say "nigger" when the police gave
it to him; that several persons were removed from the
demonstration and some of men and women in the crowd, with which the
police officers were attacked. Capt. Henry was struck over the
head with a brick bat and a chair. Witness had not spoken

thrown into his eyes; officers McMahon, Covington, Killian and others were severely beaten. Defendants were identified by various witnesses as having participated in the combat with weapons of various descriptions. The attack resulted in severe injuries to police officers, some of the defendants and others. There is evidence that the meeting place was a clean vacant lot, free of stones, bottles, sticks and iron pipes, from which it may be inferred that the weapons used, as described by numerous witnesses, must have been brought there. The State contends that the manner in which the attack was made, together with all the circumstances shown by the evidence, indicated concerted action, resulting from an illegal agreement made in advance, and that all the elements necessary to constitute conspiracy were established by competent evidence. Defendants offered evidence to refute the charges made by the State, but we are satisfied from a careful examination of the record that there was sufficient evidence to justify the jury's verdicts, and if the record were free from reversible error we should not be disposed to disturb the same.

Defendants urge, however, that they did not receive a fair and impartial trial because of the prejudice of the trial judge and his hostile attitude toward them and their counsel. Various incidents during the course of the trial are set forth at great length in defendants' brief. One of these occurred when counsel for defense, in the presence of the jury, sought to make a motion, whereupon the following colloquy between court and counsel ensued:

"Mr. Bentall: I have a motion to make. I think---
The Court: Overruled.

Mr. Bentall: We have a motion that we wanted to make.
Let us make the motion.

The Court: You have made it.

Mr. Bentall: No, we are going to file a written motion.

The Court: What do you want to do, give me a lie in my face this morning? I have heard you make a motion, are you denying that you made it?

Mr. Bentall: I started to make a motion.

The Court: I heard you make a motion.

[illegible]

Author's address: *University of Illinois at Chicago, 606 S. Dearborn St., Chicago, IL 60607, USA*

To ensure that the package will be delivered to the correct address, please provide the following information:

THE SECRETARY OF THE ARMY

-170-11-1968

1960-1961, 1962-1963, 1964-1965, 1966-1967, 1968-1969, 1970-1971, 1972-1973, 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 27

CONFIDENTIAL - SECURITY INFORMATION

THE UNIVERSITY OF CHICAGO

[illegible]

modi vel essentia, quoniam deinde de modis illis, quibus mundus est, etiam non est aliud

1. 1992 Q 4 1237

[illegible]

... ..

1. *Journal of the American Medical Association*, 1997; 277: 1001-1005.

1990年12月15日

...and other ...

Mr. [Name] was born at [Location], [State], [Date].

THESE ARE THE RESULTS OF THE RECENT RESEARCH BY THE NATIONAL ACADEMY OF SCIENCES.

...and a value of between 1 and 100.

[illegible]

Mr. Bental: I do not recall; I said I wanted to make a--
The Court: You said, I want to make a motion to direct--
Mr. Bental: If I did, then I certainly apologise to the

Court. I do not recall.

The Court: I will punish you for contempt if this happens again. The jury may retire."

The remarks of the court with reference to punishing counsel for defendants were unnecessary and improper. It is obvious that defendants were not permitted to make their motion. The court evidently assumed that the motion about to be made would be for a directed verdict, and anticipated the actual making of the motion by overruling the same without giving counsel an opportunity to make the motion or state the ground therefor. Under the circumstances it was proper for counsel to insist that he be permitted to state his motion, and the attitude of the court in the presence of the jury was obviously hostile and prejudicial.

After the jury had left the court room, the following occurred:

"Mr. Bental: I do not recall that I made that motion. If I made it, it is a mistake of mine, and the record will show. I always take a judge's words.

The Court: You are in a courtroom and you ought to know it, and you are not out in a lot. I have more than 75 policemen at my beck and call. They are not all armed, either. Now, what is your motion?"

This would indicate that when the jury was no longer present the court had concluded that counsel was right in stating that no motion had been made. However, the impression of the court's attitude toward counsel and the defendants had already been left with the jury. What the court meant by suggesting to counsel that he was in a court room and "not out in a lot," and that the court had "more than 75 policemen at his beck and call," is not entirely clear, but it was merely one of numerous indications of the hostile attitude of the court toward defendants and their counsel.

When the question arose as to whether a permit had been issued for the meeting on the day in question, the defendants objected, and gave as the reason for their objection that no permit was necessary,

whereupon the court remarked: "You are not making the law, go on, Officer, he answered that."

On another occasion, when the question arose as to whether it was part of the policemen's duty to arrange a conference between a committee appointed at the meeting and the relief station supervisor, the following occurred:

"Q. Is that a policeman's duty? A. No, it is not necessarily a policeman's duty.

Q. Well, you are a policeman, are you? A. No.

State's Attorney: I object. He said he was not.

The Witness: No. I am not a policeman.

The Court: He answered that three times."

The record does not disclose that the question had been answered before, and it was improper for the trial judge to say that it had been answered three times.

While Mary Vernick, one of the defendants, was testifying in her own behalf, the court instructed her to answer a question, "Yes or No," and the following took place:

"The Witness: I would like to answer that, please.

The Court: Answer 'Yes or No,' not as you please. Just answer the question. We have had enough speeches."

Toward the end of the trial one of the attorneys for defense addressed the court, and the following took place:

"Mr. Myers: I do not know whether the Court intends to adjourn, but I have three witnesses that I am expecting in the morning.

The Court: You have three witnesses back there? Call them in,

Mr. Meyers: I will do that.

The Court: Go ahead. We will call all of the witnesses for the defense. We will close the defense tonight.

Mr. Meyers: We have three more witnesses.

The Court: Your witnesses have been all cumulative for the last---

Mr. Meyers: That is true, but we would like to have these three witnesses in the morning.

The Court: We cannot call the whole South Side. It is cumulative.

Mr. Meyers: That will be very brief in the morning.

The Court: Call your next witness."

The witnesses to whom counsel referred were social workers, and not defendants. Presumably they were disinterested witnesses, and the court was not warranted in assuming and stating in the presence of

1. The Commission has received information from the public that the Commission's report on the investigation of the activities of the Committee to Abolish Government of the United States (CAGUS) is being withheld from the public. The Commission is currently reviewing this information and will issue a report on the matter as soon as possible.

It is noted that the following information was received from the Bureau of the Census, Washington, D. C., on 10/10/50:

1. The first of these is the fact that the
2. second of these is the fact that the
3. third of these is the fact that the
4. fourth of these is the fact that the
5. fifth of these is the fact that the
6. sixth of these is the fact that the
7. seventh of these is the fact that the
8. eighth of these is the fact that the
9. ninth of these is the fact that the
10. tenth of these is the fact that the

The record does not disclose that the applicant had been interviewed before and it was improper for the trial judge to say that it had been suggested that she was a Communist.

"Yes sir, Mr. Tolson." and "The following book covers
in her own words, the events transpired from the beginning,
While Mary Jackson, one of the defendants, was being tried

The following is a list of the names of the persons who were present at the meeting of the Board of Directors of the American Telephone and Telegraph Company, held on the 15th day of December, 1908, at New York City, New York.

1. The following information is being furnished to you for your information:

10. I have been thinking about you a lot lately, and I hope you are well. I have been busy with work, but I always find time to think of my friends.

The Court has also been advised by Mr. Meyer that he will be able to appear at the Court on Monday, May 10, 1968, and will also be able to appear on Tuesday, May 11, 1968.

Mr. [redacted] will be very busy in the morning.
The [redacted] will be very busy in the morning.
The [redacted] will be very busy in the morning.

[illegible]

the jury that their testimony would be cumulative. The trial presented close issues of fact, as to which there was a sharp conflict in the evidence, and defendants had the right to produce such evidence as they thought proper to rebut the State's charges and sustain their defense. To characterize the evidence as "cumulative," in the presence of the jury, might well have given the jury the impression that some of the previous evidence introduced by defendants was cumulative and of no value, and that the evidence of the three remaining witnesses would likewise be of little value.

These are but some of the incidents indicating the attitude of the trial court; there are numerous others. It has been aptly stated that "jurors are very vigilant in scrutinizing all that is said by the trial judge in the progress of a cause before them, and great care should be observed that nothing is said which can, by any possibility, be construed to the prejudice of either party." (Orenkrite v. Dickerson, 51 Mich. 177.) In Wheeler v. Wallace, 53 Mich. 355, the court said:

"It is, nevertheless, possible for a judge, however correct his motives, to be unconsciously so disturbed by circumstances that should not affect him, as to do and say, in the excitement of a trial, something, the effect of which he would not at the time realize, and thereby accomplish a mischief which was not designed."

So, in this case, the jury might well have inferred from some of the remarks of the court that he did not accord much importance to the defendants' evidence, and this in itself may have been of sufficient weight with the jury to result in verdicts finding the defendants guilty. The trial was of long duration, and undoubtedly there were many circumstances to tax the court's patience. Nevertheless, from a careful examination of the record we believe that there were violations of that careful regard which should be paid to the conduct of the trial where the liberty of defendants is at stake. The various incidents taken together, in our opinion, justify

The fact that these witnesses were so completely misled by the evidence presented to them is shown by the fact that they were not even asked to explain the evidence. The evidence was presented to them in a form which was so misleading that they were not even asked to explain it. The evidence was presented to them in a form which was so misleading that they were not even asked to explain it.

THE EVIDENCE

There are but some of the incidents which are mentioned in the evidence of the trial court. There are many others. It has been said that the jury were not allowed to see the evidence. It has been said that the jury were not allowed to see the evidence. It has been said that the jury were not allowed to see the evidence.

THE EVIDENCE IN THE TRIAL COURT

THE EVIDENCE IN THE TRIAL COURT

It is a well-known fact that the jury were not allowed to see the evidence. It is a well-known fact that the jury were not allowed to see the evidence. It is a well-known fact that the jury were not allowed to see the evidence.

So, in this case, the jury were not allowed to see the evidence. So, in this case, the jury were not allowed to see the evidence. So, in this case, the jury were not allowed to see the evidence. So, in this case, the jury were not allowed to see the evidence. So, in this case, the jury were not allowed to see the evidence.

the contention that defendants did not have a fair and impartial trial.

It is also urged that the court erred in instructing the jury. Seven of the headings in defendants' brief, and a considerable portion of the argument, are devoted to the instructions. We have examined them carefully, however, and believe that they correctly charged the jury as to the law relating to conspiracy, the degree of proof required, the credibility to be accorded to witnesses, the function and purposes of the indictment, and other essential matters relating to the trial of the cause and the issues involved. Upon the whole, the instructions were fair to both the State and defendants, were couched in simple language that a lay jury could understand, and are free from the criticisms made.

For the reasons stated herein, the judgments of conviction as to each of the defendants is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

Scanlan, P. J., and Sullivan, J., concur.

Information was not a good fit for the model. A full collinearity test

• **2008**

It is also noted that the record copy is maintained by
July. None of the evidence in testimony, trial, was a complete
the parties at the moment, are devoted to the investigation.
The records of the parties, however, and believe that they
correctly reflect the fact as to the relation to community,
the terms of their conduct, the possibility of being used in
witnesses, the location and purpose of the defendant, and other
essential matters relating to the trial of the case and the issues
involved. Upon the whole, the investigations were fair to both the
State and defendant, were conducted in simple language and a lay
jury could understand, and are true and reliable.

For the reasons stated herein, the judgment of con-
viction as to each of the defendants is affirmed and the same
recommended for a new trial.

ANALYST: CH. LINDVALL

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

37968

JACOB FROESCHER,
Appellee,

v.

WILCOX COMPANY, a
corporation, ROLAND E. WILCOX
and PHILIP C. CORRADO,
Appellants.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 622

MR. JUSTICE FRIEND DELIVERED THE OPINION OF THE COURT.

Plaintiff recovered judgment in the Municipal court in a contract action of the fourth class for \$448.70. The case was heard by the court without a jury, upon an agreed statement of facts. No question arises on the pleadings. Plaintiff has not appeared or filed a brief in defense of his judgment.

The facts disclose that defendants had filed in the office of the secretary of state a statement for qualification to sell the Wilcox Company's prior preferred stock as securities in class "C", under the Illinois Securities act. In response to interrogatories relating thereto defendants stated that they intended to issue 1/10th of one share of common stock as a bonus for each share of prior preferred stock subscribed for and paid. After said securities had been qualified under the act, plaintiff executed and delivered to defendants his subscription for shares of prior preferred stock. The subscription agreement made no mention or provision for a common stock bonus and none was discussed by the parties or offered to plaintiff. It was stipulated that plaintiff had no knowledge of the filing of statement for qualification with the secretary of state and did

not rely on same in making his purchase. Subsequent to the qualification of defendants' stock, and after plaintiff had subscribed for a portion thereof, the right to sell the stock was terminated by the secretary of state upon the defendant company's written request, and not because of any violation of the Securities act. Plaintiff seeks by this suit to rescind his subscription and secure the return of money paid for the prior preferred stock, together with attorney's fees.

Plaintiff's case and the court's judgment in his favor are based on the fact that the qualification statement contained an expressed intention by defendants to issue a common stock bonus, whereas none was issued to plaintiff. However, plaintiff's written subscription agreement was for the purchase of prior preferred stock, and did not mention or provide for the issuance of a common stock bonus to him. Moreover, the subject was never discussed, nor did plaintiff request a bonus. He had no knowledge of the qualification statement filed with the secretary of state, and did not rely thereon. Apparently he did not know of any intention expressed by defendants to issue a bonus.

The language of the Securities act (Illinois state bar statutes, 1935, chap. 32, sec. 7) relating to the qualification of securities is as follows:

"Section 7. Securities in Class 'C' may be disposed of, sold or offered for sale upon compliance with the following conditions, and not otherwise:

(a) A statement shall be filed in the office of the Secretary of State:

1. Describing the evidences of indebtedness, preferred stock or common stock intended to be offered or sold;
2. Stating the law under which and the time when the issuer was organized;
3. Giving a detailed statement of the assets and liabilities of such issuer and income or profit and loss statement, and giving an analysis of surplus account;
4. Giving the names and addresses of its principal officers and of its directors or trustees;
5. Giving pertinent facts, data, and information establishing that the securities to be offered are securities in Class 'C'.

not rely on some in making the statement. The statement is the
 qualification of defendant's statement, and after plaintiff had been
 advised that a portion thereof, the right to call the above was
 furnished by the necessity of state upon the defendant's company's
 officer testimony, and not because of any violation of the defendant's
 act. Plaintiff asked by this suit to recover the defendant's and
 receive the return of money paid for the past year, and for
 other with attorney's fees.

Plaintiff's case and the court's judgment in this case
 are based on the fact that the defendant's statement was
 an agreement induced by defendant to issue a check to
 himself, which was issued to himself. However, plaintiff's
 written representation agreement was for the purpose of being the
 check made, and his not mention of the fact that the plaintiff was a
 common stock to him. However, the subject was never dis-
 cussed, and his plaintiff never a check. In fact no knowledge
 of the defendant's statement that the defendant was aware
 and did not tell himself. Apparently he did not know of the state-
 ment expressed by defendant to issue a check.

The language of the defendant and plaintiff shall be
 stated, and, and, and, V) relating to the condition of
 securities in the following

"Section 7. Securities in Class V may be disposed of,
 sold or offered for sale upon compliance with the following condi-
 tions, and not otherwise:
 (a) A statement shall be filed in the office of the
 Secretary of State
 I. Describing the witnesses of independent, qualified
 stock or common stock intended to be offered to sell;
 II. Stating the law under which and the time when the
 issues are registered
 III. Stating a detailed statement of the assets and
 liabilities of each issuer and issuer or trust and their statements,
 and stating an analysis of certain securities
 IV. Stating the names and addresses of the following
 officers and of the directors of the issuer;
 V. Stating the names, titles, and addresses of each
 holder of the securities in the offered and securities in Class V."

Such statement shall be verified by the oath of not less than two credible persons having knowledge of the facts. Not less than twenty-five copies of such statement, wholly printed or wholly typewritten, shall at the time of filing the original statement be filed with the Secretary of State. The printed or typewritten copies so filed shall bear at the top in bold faced type the expression:

'Securities in Class "C" under Illinois Securities Law,' followed by the expression, also in bold faced type:

"This statement is prepared by parties interested in the sale of securities herein mentioned. Neither the State of Illinois, nor any officer of the State, assumes any responsibility for any statement contained herein nor recommends any of the securities described below."

It does not follow from the foregoing provisions of the act that information and data contained in statements filed should become part of the contract between the parties, especially where the subscriber had no knowledge of the statement and therefore could not have relied thereon. It was said in Diamond v. National Hardwood Co., 234 Mich. 436, 438, where actual fraud was alleged to have been practiced on the Michigan Securities Commission in procuring from it a license to sell securities, that

"the application is not made to be used as an inducement to the public to buy the securities of the applicant, but only to give the commission such information as it may require in order that permission to offer the securities for sale may be obtained. Representations to the commission are not intended for the prospective purchaser, and unless he knows and relies upon them when he purchases, it cannot be advanced that he was in any way influenced by them. Plaintiff makes no claim that he knew of or relied upon the truthfulness of disclosures to the commission. While all records of the proceedings before the commission were at all times open to his inspection, he gave them no attention or consideration until long after he had made the purchase complained of."

In Munnell v. Danbury, 154 Mass. 286, 290, which is cited in the Diamond case, supra, the court said that:

"The certificate was made and filed for the definite purpose, not of influencing the public, but of obtaining from the state a specific right, which did not affect the validity of its contracts, but merely relieved its agents in Massachusetts of a penalty. It was not addressed to or intended for the public, and was known to the plaintiff only from the search of his attorney. It could not have been intended or designed by the defendants that the plaintiff should ascertain its contents and be induced by them to take the notes. It is not such a representation, made by one to another with intent to deceive, as will sustain the action. Its statements are in no fair sense addressed to the person who searches for, discovers, and acts upon

them, and cannot fairly be inferred or found to have been made with the intent to deceive him."

We find no provision in the Illinois Securities act making the qualification statement part of the contract between the parties. Section 7 merely stipulates the conditions upon which securities in Class "C" may be disposed of, sold or offered for sale. When these conditions are met, and no actual fraud is charged or shown, the securities may be sold and the contract for sale between the parties will not later be rescinded because of subsequently discovered matter contained in the qualification statement, of which the purchaser had no knowledge or upon which he did not rely.

Section 37 (1) of the act, which relates to the voiding of sales, provides that

"every sale and contract of sale made in violation of any of the provisions of this act shall be void at the election of the purchaser, and the seller of the securities so sold, the officers and directors of the seller, and each and every solicitor, agent or broker of or for such seller, who shall have knowingly performed any act or in any way furthered such sale, shall be jointly and severally liable, in an action at law or in equity, upon tender to the seller or in court of the securities sold, to the purchaser for the amount paid, the consideration given or the value thereof, together with his reasonable attorney's fees in any action brought for such recovery."

As we read this provision, it does not follow that all sales made are automatically rendered voidable because a seller of securities has violated the act in any particular. The provision relates only to sales and contracts of sale made in violation of any of the provisions of the act, and therefore relates to transactions in which the sale itself is in violation of the act. The statement required by section 7 having been filed, the sale to plaintiff was not in violation of the act, and therefore was not a voidable sale under the provisions of section 37.

For the reasons stated herein, the judgment of the Municipal court will be reversed and judgment entered here for defendants and against plaintiff.

REVERSED AND JUDGMENT HERE FOR DEFENDANTS
AND AGAINST PLAINTIFF.

Scanlan, P. J., and Sullivan, J., concur.

that, and because it is in the interest of the public to have such laws, and the intent is to make them.

It is the intention of the Legislature to make such laws.

The Legislature has the honor to be the first to make such laws.

Section 7 of the Constitution of the State of Illinois is as follows:

"That the Legislature shall have the honor to be the first to make such laws."

Conditions are such, and no other law is to be made by the Legislature.

Section 8 of the Constitution of the State of Illinois is as follows:

"That the Legislature shall have the honor to be the first to make such laws."

Section 9 of the Constitution of the State of Illinois is as follows:

"That the Legislature shall have the honor to be the first to make such laws."

Section 10 of the Constitution of the State of Illinois is as follows:

Section 11 of the Constitution of the State of Illinois is as follows:

Section 12 of the Constitution of the State of Illinois is as follows:

"That the Legislature shall have the honor to be the first to make such laws."

Section 13 of the Constitution of the State of Illinois is as follows:

Section 14 of the Constitution of the State of Illinois is as follows:

Section 15 of the Constitution of the State of Illinois is as follows:

Section 16 of the Constitution of the State of Illinois is as follows:

Section 17 of the Constitution of the State of Illinois is as follows:

Section 18 of the Constitution of the State of Illinois is as follows:

Section 19 of the Constitution of the State of Illinois is as follows:

Section 20 of the Constitution of the State of Illinois is as follows:

Section 21 of the Constitution of the State of Illinois is as follows:

Section 22 of the Constitution of the State of Illinois is as follows:

Section 23 of the Constitution of the State of Illinois is as follows:

Section 24 of the Constitution of the State of Illinois is as follows:

37976

ALEX LEHMAN,
Appellee,

v.

I. A. THOMAS,
Appellant.

APPEAL FROM CIRCUIT COURT,
COOK COUNTY.

282 I.A. 623

MR. JUSTICE FRANK DELIVERED THE OPINION OF THE COURT.

July 21, 1932, plaintiff recovered a contract judgment before a justice of the peace in Oak Park, Cook county, Illinois, for \$242.50, from which defendant perfected an appeal by filing bond and transcript of proceedings in the circuit court January 17, 1934. February 20, 1934, trial was had in the circuit court and judgment in contract was entered on said date for \$277.35. From said judgment defendant filed notice of appeal and proof of service in the circuit court clerk's office March 1, 1934. March 3, 1934, without notice or any motion to vacate the judgment theretofore entered February 20, 1934, the circuit court entered a tert judgment against defendant for \$277.35, nunc pro tunc as of February 20, 1934. Thereafter, March 10, 1934, pursuant to notice and affidavits, defendant moved to expunge and vacate said tert judgment. April 7, 1934, the circuit court entered an order on motion of plaintiff's counsel vacating and setting aside the judgment of February 20, 1934, without prejudice to judgment entered March 3, 1934. April 27, 1934, defendant was arrested by the sheriff of Cook county, under a writ of habeas ad satisfaciendum, based upon the tert judgment entered March 3, 1934, as of February 20, 1934, and remained in the custody of the sheriff for several days, until

2072

ALAN LAMMAN;

Attorney

at

1. A. THOMAS;

Appellant

MR. JUSTICE WILLIAM LUTHER, JR. OF THE COURT.

July 22, 1934, Plaintiff presented a certified judgment

before a Justice of the Peace in Cook County, Illinois,

for \$200.00, from which defendant requested an appeal by filing

with the clerk of the court a copy of the original judgment

and a copy of the original judgment and a copy of the original

and judgment in case No. 100,000, dated July 1934.

When said judgment defendant filed notice of appeal and paid of

notice in the circuit court of Cook County, Illinois, dated

July 1934, without notice or any motion to vacate the judgment.

Defendant's motion was denied July 1934, the circuit court

a copy of the judgment against defendant for \$200.00, dated July 1934, to

defendant, dated July 1934, without notice or any motion to vacate

the judgment, defendant moved to vacate the judgment and to

judgment, July 1934, the circuit court entered an order on

motion of defendant's counsel vacating the judgment and setting aside the judgment

of defendant, dated July 1934, without notice or any motion to vacate

the judgment, dated July 1934, without notice or any motion to vacate

the judgment, dated July 1934, without notice or any motion to vacate

the judgment, dated July 1934, without notice or any motion to vacate

the judgment, dated July 1934, without notice or any motion to vacate

the judgment, dated July 1934, without notice or any motion to vacate

released. April 28, 1934, defendant moved to quash the writ and to be released from custody, and all pending motions made by him were continued by order of the court to May 2, 1934, the court denying the motion to quash the writ and to vacate the judgment in tort.

June 21, 1934, the trial court settled and filed a report of proceedings at the trial of the motion to vacate the tort judgment and to quash the writ. The report of proceedings certified by the court contained the following statement:

"At the hearing of the motions of the defendant to quash the writ of habeas ad satisfaciendum, and to vacate the order for 'tort judgment,' held in open court on April 1st and May 2nd, 1934, counsel for plaintiff stated and admitted, and the court agreed, that at the trial on the merits on February 20, 1934, in this case, a ruling at the close of all the evidence was made by the court that there was no evidence of malice in any act of the defendant, that the defendant was merely negligent and lacking in due care in driving his automobile along the street, whereby his car came into collision with an automobile of the plaintiff, parked at the curb and unoccupied, which resulted in property damage. After argument, the court stated that in his opinion the 'defendant now should seek relief in the county court.'"

May 12, 1934, defendant filed his praecipe for record, and May 2, 1934, presented his bond for appeal to this court in the sum of \$500, which was on June 2, 1934, signed by the circuit court, approved and ordered filed. Plaintiff has filed no brief in defense of the judgment entered in his favor.

In support of his contention that the tort judgment, dated March 3, 1934, be vacated and set aside and that the writ of habeas ad satisfaciendum be quashed and permanently denied, defendant urges that on appeal from a justice of the peace the circuit court has only the powers which the justice had, and that since no statute authorizes a justice to enter a tort judgment the circuit court on appeal had no power to enter anything except a judgment in contract. Defendant is evidently in error as to this contention for chap. 79, art. II, par. 16 (second), Illinois State Bar Statutes,

(1935), vests justices and constables with jurisdiction "in actions for damages for injury to real property, or for taking, detaining or injuring personal property."

While it may be conceded that the order denying the motion of defendant to quash the writ was an appealable order, we think the judgment in tort against defendant was properly entered, but it is difficult to understand why a copias ad satisfaciendum should have issued on this tort judgment, because there is nothing in the judgment itself which would warrant such action. The report of proceedings contains a statement by the court clearly exonerating defendant of any malice and specifically states that defendant was merely negligent and lacking in due care in driving his automobile along the street. Upon the record of the case plaintiff is entitled to a tort judgment against defendant, but not to a copias ad satisfaciendum for his imprisonment, and the latter should have been quashed on defendant's motion.

The tort judgment entered by the court will therefore be affirmed, but that part of the order denying defendant's motion to quash the writ for a copias ad satisfaciendum will be reversed and the cause remanded with directions to quash said writ.

AFFIRMED IN PART AND REVERSED IN
PART AND REMANDED WITH DIRECTIONS.

Scanlan, P. J., and Sullivan, J., concur.

Copyright © 2000 by John Wiley & Sons, Inc.

[illegible]

STUDY OF THE LARVAE OF THE BUTTERFLY

THIS IS NOT A COPY OF THE ORIGINAL DOCUMENT

the United States, where citizens are free to discuss the issues of national defense.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

100-443887-100

Approved: _____ Date: _____

Itself which would not be a good idea. The only thing that would be a good idea is to have a good idea of what the future is going to be like. The only way to do that is to have a good idea of what the future is going to be like. The only way to do that is to have a good idea of what the future is going to be like.

[Faint, illegible text at the bottom of the page]

Downloaded At: 11:53 11 September 2009

...the ... of ...

Copyright © 1999 by John Wiley & Sons, Inc.

— 425 —

reiser

THE COPY IS BEING RETURNED BY THE POST OFFICE

as an unaffiliated policy maker to a new field and agent.

For the purpose of this study, the following hypotheses were formulated:

“In the days of trouble, it is better to

... ..

Journal of Management Inquiry 21(1) 3-15

38011

CARL W. HIMSILBERG,
Appellant,

v.

PAUL STERNBURG,
Appellee.

APPEAL FROM MUNICIPAL

COURT OF CHICAGO.

232 I.A. 623

MR. JUSTICE FRIEND DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action in replevin to recover possession of a Hudson automobile, pursuant to an indictment of conveyance executed by defendant June 1, 1933. After hearing, the court entered judgment for defendant and ordered that writ of reterno habende issue, from which plaintiff prosecutes this appeal.

It appears that on June 1, 1933, defendant, Paul Sternburg, purchased from one Lewis M. Browning the automobile in question, and executed his principal promissory note of that date for \$126.80, containing also other provisions as follows:

"As security for the payment of the aforesaid debt, I hereby sell, assign and transfer unto said Lewis M. Browning, the following described property, to-wit:

1930 Hudson Brougham, Motor No. 11527.

I agree that the automobile above described was purchased by me from said Lewis M. Browning without any warranty or representation of any kind on his part with reference to said automobile or its condition. In case of my failure to pay any installment of principal or interest of the foregoing indebtedness when the same shall become due, or in case the holder hereof shall at any time deem himself or said debt or security unsafe, it shall be lawful for him to take possession of the aforesaid property wherever the same may be found, and sell the same at public or private sale with or without notice, and after paying all expenses, debts, costs and charges, shall apply the balance upon said indebtedness, and in case the proceeds of such sale shall be insufficient to pay the same, I agree to pay the deficiency as being a balance due upon this note."

Evidence adduced upon the trial disclosed that plaintiff,

Carl W. Himmelberg, became the owner and holder of said note by virtue of an assignment from Brooking to the First National Bank of Cuba, N. Y., and from the bank to him. There is also undisputed proof that defendant defaulted in the payment of the principal sum of \$125.50 and interest thereon.

Plaintiff all through his brief treats the instrument in question as a chattel mortgage, and the court evidently also proceeded on that theory but held in effect that under par. 27, sec. 1, chap. 95, Illinois State Bar Statutes, 1935, requiring notes secured by chattel mortgage to state upon their face that they are so secured, the mortgage was void. In this view we cannot concur, because the instrument upon its face shows that the indebtedness was secured by an assignment and transfer of personal property specifically described, and substantially complies with the statutory requirements. (Blake-Silkwood Motor Co. v. Spiree, 245 Ill. App. 148.)

Moreover, the note and contract between the parties provides that in case of default in the payment of principal or interest of the indebtedness when due, "it shall be lawful for him (the payee) to take possession of the aforesaid property, (the automobile) wherever the same may be found." Plaintiff, as assignee under a valid assignment from the original payee, had the right to possession of the chattel and was entitled to such possession upon replevin.

The judgment of the Municipal court is reversed and the cause is remanded with directions to find the right of possession to the property in plaintiff.

REVERSED AND REMANDED WITH DIRECTIONS.

Scanlan, P. J., and Sullivan, J., concur.

38015

JOSEPH GRAZIANO,
Appellee,

v.

AMERICAN RAILWAY EXPRESS
COMPANY, a corporation,
Appellant.

APPEAL FROM CIRCUIT COURT,
COOK COUNTY.

282 I.A. 623

MR. JUSTICE FRANK DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action of trespass on the case in the circuit court to recover damages for personal injuries and property damage sustained in an automobile accident. The court entered judgment upon the jury's verdict finding defendant guilty, and assessed plaintiff's damages at \$3,000. This appeal followed.

The accident occurred on the morning of June 21, 1928, at the intersection of Throop and Taylor streets. Plaintiff was driving a new Buick automobile which he had purchased only a few days before. It was his contention that one of defendant's trucks struck his car and forced it into and upon an iron trolley pole located on the north side of Taylor street. Defendant had interposed a plea of the general issue and special pleas denying ownership, possession, operation and control of the truck.

Numerous witnesses testified at the trial, as is evidenced by a record of nearly 1,400 pages.

It was defendant's contention that its truck was not involved in plaintiff's accident, but that it was due entirely to plaintiff's inexperience in driving, and evidence was introduced on behalf of defendant to show that all its trucks and authorized drivers were at some other place at the time in question and could not have been involved in the accident.

100-4488

JOHN B. BROWN,
Defendant.

v.

AMERICAN NAT'L BANK
Plaintiff, a corporation.
JAMES H. BROWN,
Defendant.

100-4488

THE JURY TRIED THE CASE ON THE 12TH DAY OF JULY.

Plaintiff brought an action of trespass on the 12th day of

the month of July in the year 1934 against the defendant.

The complaint contained in an affidavit sworn to by the
defendant upon the 12th day of July 1934, stating that the
defendant's damages were \$10,000. This complaint followed.

The complaint was returned on the 12th day of July 1934.

At the instance of the plaintiff and the defendant, the
defendant's damages were \$10,000. This complaint followed.

The complaint was returned on the 12th day of July 1934.

At the instance of the plaintiff and the defendant, the
defendant's damages were \$10,000. This complaint followed.

The complaint was returned on the 12th day of July 1934.

At the instance of the plaintiff and the defendant, the
defendant's damages were \$10,000. This complaint followed.

The complaint was returned on the 12th day of July 1934.

At the instance of the plaintiff and the defendant, the
defendant's damages were \$10,000. This complaint followed.

The complaint was returned on the 12th day of July 1934.

At the instance of the plaintiff and the defendant, the
defendant's damages were \$10,000. This complaint followed.

Reversal is sought upon several grounds, but as the judgment must be reversed because of the manner in which the case was tried we refrain from commenting on the evidence and review none of the contentions made by defendant, except the one which relates to the improper conduct of plaintiff's attorney.

It is urged by defendant that throughout the trial the conduct of plaintiff's counsel was calculated to prevent a fair trial of the issues and to confuse and prejudice the jury. In the absence of Mr. Marco Dellefane, who was engaged in another court, Mr. Irving G. Laseve tried the case for plaintiff. Numerous instances of improprieties on his part are cited in defendant's brief. In the course of his opening argument to the jury, during much of which time the trial court was evidently absent from the bench, preparing instructions, counsel indulged in the following statements:

"The defense in this case was the greatest imposition ever practiced by any lawyer and the greatest imposition ever put upon a court or upon men in the history of this country and in this state * * *. I do not think there is another lawyer practicing at the bar that ever has acted as Himmelhoch did in this case.

"Mr. Himmelhoch: I object." (No ruling. Court absent.)

In another portion of his opening argument, counsel stated:

"And I say to you a fair, reasonable inference from the evidence and I promise to prove to you that he (Himmelhoch) was actuated by only one ulterior motive, namely, to discourage lawyers from taking cases against the American Railway Express Company, because it becomes so unprofitable that no lawyer wants to come in and try a law suit. * * * I will convince you and that any unprejudiced mind could be prejudiced, and that all of this attempt and all of this conduct of Mr. Himmelhoch from beginning to end was to discourage lawyers * * *.

"Mr. Himmelhoch: I object to that." (No ruling. Court absent.)

Again, in his opening argument, counsel proceeded as follows:

"Leave me point out to you gentlemen the hand that works behind this defense, the facts and circumstances, and the evidence in this record, and I think before you get through I will convince you so that you will believe, as I believe, it is the most contemptible and most dirtiest, most crooked defense that was ever

perpetrated in a court room.

"Mr. Himmelhoch: I object." (No ruling.)

In another part of the argument counsel stated:

"It is not because this accident happened on Throop and Taylor, you know and I know if this happened anywhere in the city of Chicago the same kind of evidence would be offered and it is offered for the purpose, as I stated before, of discouraging us lawyers against handling any cases against them."

And again:

"And there are some more trucks that would have a chance to go up on a sidewalk, or even run into your home and kill somebody, and then you would hear Mr. Himmelhoch hollering that it could not have been their truck."

"I want to show you men how far these corporate interests go sometimes to discourage lawyers from instituting suits against that particular company."

In commenting upon the testimony of Mrs. Wicauts, who, as plaintiff's witness, had claimed she was the only eyewitness of the accident, counsel said:

"I never saw a woman that told a story that appeared more trustworthy, more honorable. It just reminded me of my mother going on that witness stand. I wonder if you men thought of your mother or your wife getting on the witness stand and having some cute lawyer cross-examine her."

After the court had returned to the bench counsel proceeded with his argument as follows:

"Let us get the next issue. It is in the record, gentlemen, and I have a right to discuss the law with you. Anyway, it is a matter of law that under the law you cannot sue in the state courts, a corporation for more than \$3,000."

"Mr. Himmelhoch: I object to that argument, if the Court please."

"The Court: Yes, I do not think that is proper."

It was held in Webbush B. Co. v. Billings, 215 Ill. 37, and Levinson v. Fidelity & Casualty Co., 348 Ill. 495, that such statements were clearly erroneous and calculated to mislead the jury, and that the sustaining of objections by the trial judge did not cure the prejudicial error.

Upon cross-examination of the deputy clerk of the circuit court, counsel asked the following questions:

"Mr. Masova: Did you ever have, in any case that was tried by Mr. Himmelhoch, the files in which Mr. Himmelhoch did not deny ownership or control of the automobile or truck in question?"

"Mr. Himmelhoch: That is objected to, if the court please."

"The Court: I do not think that is material. Objection sustained."

The following question was asked of the same witness:

"Mr. Mazove: Did you know, as the clerk of the court here, that because of the fact that the American Railway Express Company is an out-of-town corporation, that you cannot sue them for more than \$3,000 in these courts?"

"Mr. Himmelhoch: I object to that. That is all prejudicial."

"The Court: Objection sustained."

Later in the trial, counsel again referred to the same subject matter, as follows:

"I was never in the case. Mr. Rocco DeStefano started it in my name and Rocco DeStefano is no partner of mine. His statement is as honest as the rest of his information. He was testifying a praecipe was filed at a certain time. I asked the clerk if it was not true if Mr. Himmelhoch did not always deny ownership and operation of the trucks."

"Mr. Himmelhoch: Just a minute."

"Mr. Mazove: Isn't that what took place here?"

"Mr. Himmelhoch: Counsel repeats, for an obvious purpose, something that has nothing to do with the -"

"Mr. Mazove: Judge, am I given my rights? I have a right to show the plea in this case is different than his position that he takes in open court today. If it is different the jury has a right to know it. If not, they have a right to know it."

"Mr. Himmelhoch: I object to that in the presence of the jury."

"The Court: Let the jury go out."

These and other instances, too numerous to cite, are characteristic of the methods employed by plaintiff's counsel to induce a verdict. He insists that his remarks were provoked by the conduct of defendant's attorney, but we find no support for that contention in the record. False issues were injected into the trial by plain and insidious suggestions relating to matters that had nothing to do with the case. The suggestions of a "crooked" and "dirty" defense were certainly not warranted by the plea of non-ownership nor anything that defendant's counsel said or did, nor was it proper to repeatedly insinuate that this defendant always interposed the defense of non-ownership so as to discourage lawyers "against handling any cases against them." Courts have repeatedly held that prejudicial conduct of this kind constitutes reversible error. In I. G. R. Co. v. Seitz, 111 Ill. App. 242, the court said: (p. 243)

"A lawyer who tries his case in a proper manner, observing the ethics of the profession, is at a great temporary disadvantage

The following questions were asked of the same witness:

"Mr. Sawyer: Did you know, on the night of the murder, that because of the fact that the American Union Express Company is an out-of-town corporation, that you cannot get there for more than 24 hours in those counties?"
"Mr. Sawyers: I object to that, that is all."

"The Court: Objections overruled."

Later in the trial, counsel again returned to the same

subject matter, as follows:

"I was never in the house. Mr. Sawyer believed that it is up to me and I know that I am not a person of whom, Mr. Sawyer, is no person to the rest of his testimony. He was testifying a person was there at a certain time. I asked him first if it was true if Mr. Sawyers said that it was always very

carefully and especially of the fact that
"Mr. Sawyers: That is a mistake.
"Mr. Sawyer: That is not a mistake, for an obvious person, something that was written in the book -

"Mr. Sawyer: That is not a mistake, for an obvious person, something that was written in the book -
"Mr. Sawyer: That is not a mistake, for an obvious person, something that was written in the book -
"Mr. Sawyer: That is not a mistake, for an obvious person, something that was written in the book -

"The Court: Let the jury go now."

There and other testimony, for reasons to which we

characteristic of the methods employed by Plaintiff's counsel to

induce a verdict. He insists that his testimony was given by

the content of testimony, although, but we find no support for that

conclusion in the record. When issues were raised into the trial

by plain and intelligent suggestions relating to evidence that had nothing

to do with the case. The suggestion of a "mistake" and "objection" was

found very convincing and supported by the plain of non-competence and

nothing that Plaintiff's counsel said or did, nor in proper to

repeatedly insist that this testimony was in fact the testimony

of non-competence as to the testimony, because "again nothing was

shown against him." (The Court: That is not a mistake, for an obvious person, something that was written in the book -

content of this testimony was given by the witness, in fact, in fact,

and in fact, in fact, in fact, in fact, in fact, in fact, in fact,

"The Court: Let the jury go now."

when trying a cause against counsel who resort to improper language to obtain a verdict. Verdicts thus obtained generally are and always should be short-lived. Trial courts should set them aside as often as they are obtained. It is the policy of this court to discourage such misconduct on the part of lawyers by reversing judgments obtained by them when it is manifest they are the result of unprofessional conduct."

In Farlin & Granderff Co. v. Scott, 137 Ill. App. 464, it

is said: (p. 455)

"The rule is well established in our State that in doubtful cases, or those close upon the facts, improper conduct upon the part of counsel for the successful party, which is prejudicial in its character to the defeated party, may afford sufficient ground for reversing a judgment. In Maywood Co. v. Village of Maywood, 140 Ill. 216, the Court said that it would not hesitate in a doubtful case to reverse for that reason alone, even if the trial Court by its instructions told the jury to disregard the improper remarks of the attorney. This doctrine in substance has been repeatedly announced in our State. A. J. & W. H. Co. v. Fletcher, 138 Ill. 630; Robison v. Bailey, 113 Ill. App. 131; Pioneer Savings Ass'n v. Jones, 111 Ill. App. 156; Supreme Lodge Mystic Workers v. Jones, 113 Ill. App. 242, 245."

For the reasons specified, the judgment of the circuit court is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

Scanlan, P. J., and Sullivan, J., concur.

37498

ARTHUR M. GELDEN,
Appellee,

v.

PRAIRIE STATE BANK,
a corporation,
Appellant.

APPEAL FROM CIRCUIT COURT,
COOK COUNTY.

282 I.A. 623⁴

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

Plaintiff, Arthur M. Gelden, filed a bill in equity October 2, 1931, against defendant, Prairie State Bank, (hereinafter referred to as the Bank) for the rescission of a contract theretofore entered into for the purchase by Gelden of certain notes and a trust deed securing same from the Bank. After defendant's answer was filed the cause was heard by the chancellor and a decree entered February 14, 1934, in plaintiff's favor. This appeal followed.

The material allegations of plaintiff's bill are that July 25, 1930, he entered into a contract with defendant whereby he purchased from it five first mortgage notes, aggregating \$12,500, with accompanying interest coupons, and a trust deed conveying certain improved Melrose Park real estate as security for same; that the Bank, through its then president, H. B. Dow, procured his purchase of said notes and trust deed by fraud and misrepresentation as to the character of the improvements on the real estate described in the trust deed, the value thereof, the income therefrom and other material facts concerning same; that Dow falsely represented to plaintiff that the property in question with the improvements thereon was of the fair cash market value of \$36,000 and that the annual income from same was three times the annual maintenance and fixed

17

JOHN H. WILSON,
Attorney at Law,
New York City.

V.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

JOHN H. WILSON,
Attorney at Law,
New York City.

charges, including interest on the mortgage indebtedness, taxes and assessments; that the property was improved with a building containing "three stores and flats above, and a basement under each store, each having a complete heating plant;" that Sebastiano Lorenzo, one of the makers of the notes, was the wealthiest man in Melrose Park, and that the property as improved was ample security for the mortgage debt.

The bill further alleges that Lorenzo was not on July 25, 1930, or before or since that time, the wealthiest man in Melrose Park; that the said premises were not improved with a building containing three stores with flats above, but with a building consisting of two stores with no flats above; that the stores did not have under each of them a basement equipped with a heating plant, but on the contrary the corner store of the building was heated by a stove; that the income from the premises did not on July 25, 1930, nor at any time, amount to three times the "fixed charges of said premises;" that the corner store was vacant from the time the building was erected until October 1, 1930, and the other store was vacant since April 1, 1930, and is still vacant; that there was no income of any kind from the premises prior to and on July 25, 1930; that the taxes and assessments against the property, and interest and prepayment on the mortgage indebtedness amounted each year to \$1,363.00; that the mortgaged premises were not worth \$38,000 on July 25, 1930; that all these facts were well known to defendant on that date, but were unknown to plaintiff; that knowledge of defendant's fraud and false representations did not come to plaintiff until September 11, 1931; that on September 16, 1931, he notified defendant that he elected to cancel and rescind the contract for the purchase of the notes and trust deed; that he then and there demanded the return of all moneys paid by him for the notes and trust deed which he offered to restore to defendant; and that defendant has failed and refused to return the money paid by

plaintiff for the notes and trust deed. The bill concludes with an offer to return, assign and transfer to defendant the notes and trust deed, together with any other documents received in connection therewith and to do such other equity as the court might direct, and prays for the cancellation and rescission of the contract of sale and the return of the money paid by plaintiff to defendant for the notes and trust deed.

Defendant's answer denied that the purchase of the notes and trust deed was procured through fraud and deceit practiced on plaintiff by it or any of its officers or representatives.

The court decreed the cancellation and rescission of the contract for the sale of the notes and trust deed and ordered that defendant pay plaintiff \$14,154.87, which comprised \$12,831.77 paid by plaintiff to defendant July 25, 1930, and \$2,185.40 interest on \$12,500 from that date to January 25, 1931, minus an allowance of \$612.50 to defendant for the semiannual interest collected on the notes by plaintiff on August 25, 1930, and February 25, 1931. Upon the payment of said sum to him, plaintiff was ordered to deliver to defendant the aforesaid notes and trust deed.

It appeared that Gelden, who had previously purchased mortgages and other securities from defendant and had formerly been one of its depositors, but was not at that time, discussed with Dow, president of defendant bank, on or shortly prior to April 29, 1930, the relative merits of various investment securities and the advisability of purchasing real estate mortgages, and that on that date, on a letterhead of the bank, Dow mailed the following letter to him:

"April 29, 1930.

Mr. Arthur M. Gelden,
1240 No. Wells Street,
Chicago, Illinois.

Dear Mr. Gelden,

I was very glad to have you come into our little bank this morning.

In confirmation of our conversation, I am placing a 'do not

Statement that the notes and bonds were not
 on other to persons, agents and attorneys of defendant the notes and
 bonds were, delivered with the other documents received by defendant
 the notes and to be made along with the notes and bonds, and
 property for the consideration and satisfaction of the contract of sale and
 the return of the money paid by plaintiff in advance for the notes
 and bonds.

Defendant's answer denied that the purchase of the notes
 and bonds were made through agent and attorney of plaintiff
 plaintiff by it or any of its officers or representatives.
 The agent denied the consideration and purchase of the
 contract for the sale of the notes and bonds and advised that
 defendant was plaintiff's agent, which contract was, \$11,511.77 paid
 by plaintiff to defendant July 22, 1904, and \$2,122.40 interest on
 \$11,511.77 from that date to January 22, 1905, minus an allowance of
 \$112.40 to defendant for the seasonal interest collected on the
 notes by plaintiff on March 22, 1904, and January 22, 1905.
 The payment of said sum to him, plaintiff was advised to deliver to
 defendant the aforesaid notes and bonds.

It appeared that defendant, who had previously purchased
 mortgages and other securities from defendant and had formerly been
 one of its employees, but was not at that time, connected with him,
 president of defendant bank, or its agent, prior to July 22, 1904,
 the relative parties of various investment securities and the relative
 bill of purchasing said notes and bonds, and that on that date,
 on a ledgerbook of the bank, was made the following entry to him:

July 22, 1904.
 Dr. William H. Collins,
 Cash \$11,511.77,
 Interest \$2,122.40.

That on July 22, 1904,
 I was very glad to have you come and see me and my wife
 and family.

sell' file on our two mortgages:

Loan number 1181, signed by Sebastian B. Lorenzo who is the president of the Melrose Park Lumber Company at 25th Avenue and Lake Street, \$12,500.00, due in 1935, with interest at 6½%, which loan was repurchased from the American Vault works of Chicago, having been held in their Contingent Fund Account.

Loan number 1212, signed by Frank Battaglia, \$6,500.00, on the two flat brick and two car garage at 1316 Maple Avenue, due in 1934, with interest at 6%.

Aggregating \$21,000 for July 1, delivery.

Thank you very much for this business, which I am sure you know is much appreciated.

Very truly yours,
H.A. Dow,
President."

It further appeared that several conversations with Dow ensued, culminating in plaintiff's purchase from the bank on July 25, 1930, of the \$12,500 mortgage referred to in the letter; that his purchase included only notes numbered 3, 4, 5, 6 and 7, secured by the trust deed heretofore referred to, conveying the premises located at the southeast corner of 25th Avenue and LeMayns Street, Melrose Park, Illinois; that notes 3, 4 and 5 were for \$500 each and matured, respectively, on August 28, 1931, 1932, and 1933; that note 6 was for \$1,000 and matured August 28, 1934; that note 7 was for \$10,000 and matured August 28, 1935; that, upon his purchase of the notes, plaintiff paid defendant their face value, \$12,500, and \$331.77 accrued interest; and that note 2 for \$500, although it did not mature until August 28, 1930, which was more than a month after the date of purchase, was not included in the sale of the mortgage to plaintiff and was not mentioned in Dow's letter to him.

Gelden testified that in the conversations between them from the time he received Dow's letter of April 29, 1930, until he purchased the notes and trust deed July 25, 1930, Dow repeatedly told him that "the property was worth \$36,000," and that it "had three times the income to cover the expense; * * * it was three stories and a flat above, and three basements, three individual heating plants,

and that there was a three car garage in the back, which was built after the loan was made;" that Dow "mentioned that it was a character loan, once or twice, and I asked him what he meant by that. He said, responsibility, after all, that there is no use looking at the property; irrespective of what the property is back of the note it is the one who signed the note who is responsible for its difference." Plaintiff testified further that about the first part of July "I told Mr. Dow I was going to Elgin * * * and to give me the address and I will go and investigate it. He told me, 'All these things have been investigated thoroughly. You are a busy man.' and he said, 'You can absolutely leave it to me.' He said, 'We have done all of the investigating. We had expert appraisers appraise the property.'" Golden also testified that he received the semiannual interest payments due on his notes August 25, 1930, and February 25, 1931, and that he did not visit the property in question until after there was a default in the principal and semiannual interest payments due August 25, 1931; that, when the notes and trust deed were delivered to him and he suggested that he was going to have his attorney examine the documents, Dow said: "That's a service we render our customers. We have investigated all this and there is no use to spend additional money to go and investigate the papers."

Dow denied the truth of Golden's testimony almost in its entirety. He stated that he discussed the matter of the purchase of the notes and trust deed with Golden with the bank's record of the loan before them, which showed the property appraised at \$28,000 by Lorenzo, and that he never told Golden that it was worth \$32,000; that he did not tell him the property was improved with a building consisting of three stores with flats above, and with a "basement under each store, having a complete heating plant," but that he told him that there were two stores with individual heating plants in their respective basements;

that he did not tell him that the stores were rented and made no reference to the amount of income from the premises; that he told Golden exactly what appeared on the real estate loan record of the bank; and that he did not advise him not to investigate the property nor that he should not have the notes and trust deed examined by his attorney.

It is undisputed that the improvement on the premises on July 25, 1930, consisted of two one-story stores, with a brick garage in the rear; that there was no heating plant at that time in the basement of the corner store, but that that store was heated by a stove, and that there was a broken down heating plant in the basement of the other store; that there were no flats in connection with either store, but that a week before the first tenant moved into the corner store, September 30, 1930, temporary partitions were erected therein; that neither store was occupied or rented on July 25, 1930; and that the tenant in the corner store paid \$35 rent at first, then \$25 and finally \$20. There was evidence that on July 25, 1930, when the \$12,500 first mortgage notes and trust deed were sold to plaintiff, the property, as improved, was worth less than the face value of the notes, and that the general taxes for 1929, and certain special assessments against the property were in default.

The exhibit in evidence described as the "real estate loan record" contains a record of the bank's negotiation of the original loan on the premises to Lorense and his wife and subsequent entries in connection therewith. It shows that Lorense appraised the property as improved at \$28,000; that the bank appraised it at \$22,088; that the improvement consisted of "one story stores, flats and basement, brick, gravel roof, three-car brick garage, 2 individual hot water heating plants and 2 Ever-Hot water heaters." It further showed that a loan in the amount of \$12,500 secured by a trust deed to the premises was made to the Lorenses August 23, 1928; that the loan was evidenced by

that he did not tell him that the letters were written and sent to
 witnesses in the amount of money from the government and to the
 witness himself, which appeared on the trial before him, and of the
 bank and that he did not believe the fact he investigated the property
 and that he should not have the money and that was obtained by
 his attorney.

It is mentioned that the government on the previous day
 July 22, 1937, mentioned in the anti-slavery report, with a notice to
 in the report that there was no hearing on July 22 in the house
 most of the country there, but that that also was done by a slave.
 and that there was a known fact hearing place in the basement of the
 other place; that there was no trial in connection with either party,
 but that a new matter the trial should have been into the court there,
 September 12, 1937, separately mentioned were various matters; that
 neither side was mentioned as heard on July 22, 1937, and that the
 heard in the court there with the fact of trial, that the fact
 finally 1937. There was evidence that on July 22, 1937, when the
 1937, that trial matters were not heard with the fact of trial.
 the property, as mentioned, was heard for the fact of trial of the
 matter, and that the general matter was 1937, and that the general matter
 matter against the property was in 1937.

The evidence in evidence described as the fact of trial was
 property, contained a report of the fact of trial of the property
 fact on the grounds of the fact of trial and the fact of trial of the
 is mentioned mentioned. It was then mentioned that the property
 as mentioned as 1937, that the fact of trial was 1937, that the
 the improvement consisted of the fact of trial, trial and property,
 fact, that the fact of trial was 1937, that the fact of trial was
 fact of trial and a fact of trial was 1937. It was then mentioned that
 a fact in the amount of \$11,000 received by a fact of trial in the fact of trial
 was made as the fact of trial (fact of trial) that the fact of trial was

seven principal notes and interest notes executed by Lorenzo and his wife; that the interest notes due February 28, 1929, August 28, 1929, and February 28, 1930, and the principal note due August 28, 1929, were paid in cash on or about the respective dates they matured, but that principal note 2, due August 28, 1930, and interest notes aggregating \$422.50, due at the same time, were not paid by the mortgagors on or about that date, but are shown to have been paid to the bank by Lorenzo with a note October 14, 1930. The record does not disclose that this note was ever paid.

While plaintiff's bill charged that a confidential relationship existed between the parties, and the decree so found, the chancellor found also that whether or not such a relationship existed between the parties it was immaterial to the determination of plaintiff's right to relief. Plaintiff, in effect, conceded in his brief that no such relationship existed and it therefore becomes unnecessary for us to consider that question.

Defendant contends that no false or fraudulent representations entitling plaintiff to rescind the contract for the purchase of the notes and trust deed have been shown and that, inasmuch as abundant opportunity was afforded him to investigate the mortgaged premises before purchasing the notes and trust deed in question, he is necessarily charged with any knowledge which such investigation would have disclosed.

The chancellor, having seen and heard the witnesses, found that plaintiff had proven the material allegations of his bill by a clear preponderance of the evidence and that the bank, through its president, conceived and carried out a fraudulent scheme to sell plaintiff the notes and trust deed in question. After a careful examination of all the evidence in the record we are satisfied that the court's finding should not be disturbed as being against the manifest weight of the evidence.

Predictions of future income and statements tending to

never principal roles and interest roles consisted of Leonard and his wife; that the laboratory notes for February 24, 1935, March 10, 1935, and January 26, 1935, and the principal note for April 24, 1935, were held in each one of about the respective dates they related, and that principal note B, dated August 22, 1935, and interest notes August 22, 1935, and at the same time, were not held by the participants on or about that date, but are shown to have been held by the bank by Leonard with a note dated on 11, 1935. The record does not disclose that this note was ever paid.

There is no such relationship existing and is therefore deemed unnecessary for us to consider that question.

...the notes and have been shown and that, however, as shown
and opportunity was afforded him to investigate the foregoing matters
before purchasing the notes and have been in question, he is now
usually charged with any knowledge which such investigation would

1. The Commission, having been and having the opportunity to
2. that officials had given the material information as well as
3. about government of the country and that the State, through the
4. officials, personally and directly and a Governmental system to give
5. officials the right and power and in addition, there is a central
6. member of all the members in the country and collected that the
7. country's affairs should not be divided as being against the principles

exaggerate or boost the value of property are generally not fraudulent where the parties deal at arm's length, (Burrough v. Bellon, 230 Ill. 34) but false representations of pre-existing material facts relating to the value or the income from property, which are relied upon, with no actual knowledge of their falsity, do amount to fraud, (Bouthill v. Winney, 310 Ill. 180; Jackolnick v. Vilmar, 362 Ill. 270.) Representations by a seller of a mortgage that the property securing same is improved with a building consisting of three stories with flats above, with an individual heating plant in the basement of each store, when it consists of only two stories without flats, having no heating plant in one and an unserviceable heating plant in the other, and that the building has a present income of three times its fixed charges when it is vacant and not earning any income, are material and false, and a purchaser relying on them may rescind the purchase. (Bavarian Brewing Co. v. Farrar, 143 Ill. 471.) Statements as to the value of property are ordinarily considered mere expressions of opinion, and for that reason are not sufficient to warrant a rescission of the contract, even though they are false and relied upon by the other party, yet the rule is otherwise where the misrepresentation relates to a specific extrinsic fact which affects the value. If the fact is one peculiarly within the knowledge of the party making the statement, and the statement is made with knowledge of its falsity or what the law regards as equivalent thereto, and with an intention that it shall be acted upon, and it is acted upon to the injury of the other party, the representations will amount to such fraud as will warrant a court of equity in setting aside any contract induced in whole or part by such representations. (Douglas v. Treat, 244 Ill. 593.)

The evidence shows that plaintiff was desirous of investing his idle funds in a sound first mortgage, secured by property earning at least sufficient to care for its maintenance and to meet the fixed

charges against it; that Dow, knowing this desire, falsely represented the character of the improvement on the property and the income from it; that plaintiff relied upon such statements; that they were material representations of fact, knowingly and falsely made, which induced Gelden to acquire the inadequately secured notes. Any intention or determination that plaintiff might have had to ascertain the true situation and thereby discover the falsity of the representations by visiting and inspecting the property before completing the purchase of the notes and trust deed was forestalled by Dow's insistence and repeated assurances that it was unnecessary for plaintiff to inspect the property; that everything in connection with the mortgage had been thoroughly investigated; that the bank had experts appraise the property; that, regardless of the sufficiency of the property itself as security, the mortgagee Lorenz's position, responsibility and wealth were ample guaranty of payment; that, inasmuch as plaintiff was a busy man, he could safely leave everything to Dow, and that it would be a useless waste of money for plaintiff to submit the notes and trust deed to his attorney for examination. The reasons assigned by Dow were sufficiently plausible to deter Gelden from visiting and inspecting the property. When statements are of material matters of fact, which from their nature may be assumed to be within the knowledge of the party making them, the party to whom they are made has a right to rely upon them, and in the absence of any knowledge of his own, or of any facts which should arouse doubt or suspicion, is not bound to make inquiries and examination for himself. A party guilty of fraudulent conduct whereby he induces another to act will not be allowed to impute negligence to the latter as against his own deliberate fraud. (Pustelniak v. Vilimas, supra.)

That Dow's purpose in persuading and inducing Gelden to purchase the notes and trust deed was fraudulent is borne out by the fact that he did not include note 2 in the sale of the mortgage. His

reason for not doing so is obvious. That \$300 note was about to mature August 28, 1930, just a little more than a month after he sold plaintiff all the other outstanding notes comprising the mortgage on July 25, 1930. It will also be noted that Dow did not mention this note to Golden in his letter of April 29, 1930, which was four months before its maturity. It was not paid to the bank by the mortgagors when due and the conclusion is inevitable that the bank knew or had good reason to believe, not only on July 28, 1930, but as far back as April 29, 1930, that it would not be paid. It is reasonable to assume that this note was withheld by the bank and its existence concealed so that Golden would not be apprised almost immediately after his purchase of the mortgage of the desperate financial condition of the mortgager Lorenzo and of his default.

Defendant's fraudulent purpose is further borne out by another fact. By withholding note 2 the bank could successfully conceal the default in its payment from plaintiff. But there was semiannual interest due, too, on August 28, 1930, on the notes purchased by plaintiff. The mortgagors also defaulted in the payment of this interest to the bank. Was plaintiff advised of this default? No. The bank covered it up by paying Golden on September 17, 1930, out of its own funds, the semiannual interest due him August 28, 1930. Dow testifies that Lorenzo had paid this interest to the bank before it turned same over to Golden, but his testimony is refuted by the bank's records, which show conclusively that Lorenzo paid the bank nothing on either note 2 or the semiannual interest due on the mortgage indebtedness August 28, 1930, until October 14, 1930, when the bank accepted his note in payment of such interest and note 2.

Dow claims that he told Golden about note 2 and feebly attempted to explain his failure to include it in the sale of the mortgage by stating that there was still \$15,000 due on the mortgage at the time of the sale to plaintiff "unless Mr. Lorenzo had made

arrangements to take up that five hundred. That I have no way of knowing." Dow was president of the bank and must have known that Lorense had made no arrangements "to take up that five hundred."

It is urged that plaintiff cannot have rescission of the contract because when his alleged offer to rescind was made he did not tender to defendant the \$412.50 interest he had collected on the notes and that he did not tender to defendant the mortgage guaranty policy he had received with the notes and trust deed. In other words it is contended that one who seeks to rescind a contract for any reason must place the other party in statu quo. It is sufficient answer to this contention to state that in the concluding paragraph of his bill plaintiff offered, in the event that a decree was entered in his favor, "to assign, transfer and return to defendant the said notes and trust deed as aforesaid, together with the other documents received in connection therewith, complainant further offering to do such other equity as the court may direct." The decree orders the return to defendant of the semiannual interest payments on the notes received by plaintiff by allowing the bank a credit for the amount of such interest. If the dealings between the parties have been such that there must be a consideration and adjustment of their relative rights and claims, it is sufficient for a plaintiff seeking rescission of a contract to allege in his bill that he is ready and willing to do equity in the premises. (Black on Rescissions, 2d ed., vol. 3, par. 672, pp. 1603, 1604.)

We are of the opinion that the credible evidence in the record affords ample justification for the chancellor's findings and ^{the} conclusion reached by him that a palpable and intentional fraud was perpetrated in procuring plaintiff to purchase the notes and trust deed in question. The decree of the circuit court is affirmed.

APPROVED.

Scanlan, P. J., and Friend, J., concur.

[illegible]

37652

WILLIAM F. JASMUND,
Appellee,

v.

HALDANE CLEMINSON,
Appellant.

APPEAL FROM SUPERIOR COURT,
COOK COUNTY.

262 I.A. 624¹

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

Defendant, Haldane Cleminson, seeks to reverse a judgment for \$15,000, entered against him January 13, 1934, on the verdict of a jury in an action of assumpsit brought by William F. Jasmond, plaintiff, January 30, 1932, to recover money alleged to have been lent by him to defendant.

Plaintiff's declaration consisted of six counts, the first two of which were special counts and the last four common counts.

The first count alleged that defendant, together with one J. Dwight Funk and one T. M. Callahan, was engaged in a project that involved the acquiring of a large amount of acreage property in the State of Michigan to be developed by them for recreational purposes; that defendant was in need of \$15,000 for use in connection with such project and was desirous of borrowing that amount of money from plaintiff; that for the purpose of inducing plaintiff to make the loan of this money defendant proposed to give plaintiff certain stock in the Michigan corporation to be formed and to secure him in the repayment of the loan by bonds to be issued by the corporation after the acquisition of the property; and that January 20, 1927, and Cleminson, Funk / Callahan entered into an agreement with plaintiff,

WILLIAM F. JACOBSON,
Applicant,
vs.
JAMES H. JACOBSON,
Applicant.

2321 A. 684

THE COURT HEREBY REVERSES THE ORDER OF THE COURT.

Defendant, James H. Jacobson, seeks to recover a judgment of \$10,000, entered against him January 12, 1934, on the basis of a jury in an action of assumpsit brought by William F. Jacobson, Plaintiff, January 20, 1933, to recover money alleged to have been lent by him to defendant.

Plaintiff's declaration consisted of six counts, the first two of which were special counts and the last four common counts.

The first count alleged that defendant, together with one J. Dwight Rank and one E. M. Callahan, was engaged in a project that involved the acquisition of a large amount of foreign property in the State of Michigan to be developed by them for commercial purposes; that defendant was in need of \$10,000 for use in connection with such project and was desirous of borrowing Plaintiff's money from Plaintiff; that for the purpose of inducing Plaintiff to make the loan of this money defendant proposed to give Plaintiff certain stock in the Michigan corporation to be formed and to secure him in the repayment of the loan by bonds to be issued by the corporation after the acquisition of the property and that January 12, 1933, and

which was substantially as follows:

"Agreement dated January 30th, 1927, that a non-profit Corporation is to be formed under the laws of the State of Michigan for the operation and conduct of the great Northwoods Club for recreational purposes, and further agreed by the parties hereto that the land under contract of purchase is to be exchanged for all of the stock in said corporation.

It is further agreed that an issue of \$300,000 worth of bonds be issued by the above said corporation against 10,000 acres of the land.

It is further agreed by the parties that ten per cent (10%) of all of the above stock in said corporation be delivered to William F. Jasmund for the loan of \$15,000 with interest at the rate of six per cent (6%) per annum, which interest is to be paid when and as principal payments are made on said loan.

It is further agreed that \$230,000 of the aforesaid bond issue be placed with the Marquette State Bank as Trustee, and that said Trustee be instructed to deliver to said William F. Jasmund, twenty-five percent (25%) of the proceeds of the sale of all bonds so placed in its hands until the principal sum of \$15,000 together with all interest due thereon, is paid.

Haldane Cleminson
J. Dwight Funk
W. Callahan
William F. Jasmund."

It further alleged that January 31, 1927, plaintiff lent defendant \$15,000; that in consideration of the loan defendant agreed and promised to repay the \$15,000 with interest at the rate of 6%; and that, although often requested, he has not paid said amount or any part thereof to plaintiff and refuses to do so.

The second count alleged that Cleminson, Funk and Callahan were engaged in a project for the development of the Michigan properties under the name of J. Dwight Funk & Associates; that they needed \$15,000 to further such project and desired to borrow that amount from plaintiff; that he lent it to Cleminson, Funk and Callahan upon their promise to repay it with interest at the rate of 6%; that the loan was made by the indorsement and delivery by plaintiff to Cleminson of a cashier's check for \$15,000, drawn on the West Englewood Trust & Savings Bank, which was indorsed by Cleminson and deposited in the account of J. Dwight Funk & Associates, and paid in due course by the aforesaid bank; that Cleminson, Funk and Callahan jointly and severally obligated them-

which was substantially as follows:

"Agreement dated January 20th, 1907, that a non-profit Corporation is to be formed under the laws of the State of Michigan for the operation and control of the Great Lakes Fishery Laboratory, and further agreed by the parties hereto that the land water contents of purchase to be exchanged for all of the stock in said corporation.

It is further agreed that on issue of \$200,000 worth of bonds be issued by the above said corporation against 10,000 acres of the land.

It is further agreed by the parties hereto that the sum of \$100,000 of the above said bonds be delivered to the State of Michigan for the issue of \$10,000 with interest at the rate of six per cent (6%) per annum, which interest is to be paid when and as principal payments are made on said bonds.

It is further agreed that \$20,000 of the above said bonds be placed with the Michigan State Bank at Lansing, and that said bonds be delivered to deliver to said William T. Loomis, Secretary-Treasurer of the Corporation, at the office of the said William T. Loomis, at Lansing, Michigan, and the principal sum of \$10,000 together with all interest thereon, is paid.

Witness my hand and seal of office this 20th day of January, 1907.
 William T. Loomis,
 Secretary-Treasurer.

It further alleged that January 21, 1907, William T. Loomis and

\$10,000; that in consideration of the loan \$10,000 was agreed and promised to pay the \$10,000 with interest at the rate of 6% and that, although often requested, he has not paid said amount or any part thereof to plaintiff and refused so to do.

The second count alleged that Loomis, Turk and Galison were engaged in a project for the development of the Michigan Fisheries Laboratory under the name of J. Dwight Turk & Associates; that they needed \$10,000 to further such project and desired to borrow that amount from plaintiff; that he lent it to Loomis, Turk and Galison upon their promise to repay it with interest at the rate of 6%; that the loan was made by the instrument and delivery by plaintiff to Loomis of a cashier's check for \$10,000, drawn on the First National Bank & Savings Bank, which was indorsed by Loomis and deposited in the account of J. Dwight Turk & Associates, and paid in due course by the above said bank; that Loomis, Turk and Galison jointly and severally obligated them-

selves to repay the loan; that no portion of the loan was paid by them when it became due or since; and that defendant is liable to pay plaintiff the amount thus borrowed, which, although often requested, he has failed to do.

Defendant filed a plea of the general issue to the common counts and, when his demurrer to the two special counts was overruled, a plea of the general issue to those counts, as well as a special plea of estoppel by verdict.

While no mention is made of it in the declaration in this proceeding, it appears from the evidence that on January 31, 1927, when plaintiff lent the \$15,000, he received from Cleminson his judgment note for the payment of the indebtedness with interest three months after that date, and that plaintiff had this note in his possession until the latter part of September, 1927, when he turned it over to his attorney so that a suit might be instituted on it against Cleminson, in the name of R. H. Whlert. That action was brought October 6, 1927, and resulted in a verdict and judgment against Cleminson, which was followed by an appeal to this court.

Four agreements in writing, in evidence in that case, were put in evidence in this cause by either plaintiff or defendant; the first, in point of time, being that of January 20, 1927, the substance of which has been heretofore set forth. Two of them, executed February 27, 1927, did not bear Jaesund's signature, but we are convinced from the evidence that they were executed with his knowledge and consent. The last agreement was executed August 3, 1927, several months after the maturity of the note heretofore referred to and was signed by plaintiff, as was the first agreement. All the instruments were signed by Cleminson, J. Dwight Funk and T. H. Callahan, and the two of February 21, 1927, by the Marquette Park State Bank (hereinafter referred to as the Bank). In none of them was any mention made of the note. Each agreement acknowledged an indebtedness on

...to deny the fact that no portion of the loan was paid
by them when it became due or signed any check thereon in whole
or in part. The amount of the loan, which, although it was
repaid, has been paid to be.
...of the general issue in the common
...and, when his testimony in the two special counts was over-
ruled, a plea of the general issue to those counts, as well as a
special plea of acquittal by verdict.
...in the evidence in this
...is against the evidence that on January 22, 1937,
when plaintiff loaned the \$10,000, he received from defendant his
most note for the payment of the indebtedness with interest there-
on. After that date, and that plaintiff had this note in his
possession until the latter part of September, 1937, when he turned
it over to his attorney so that a suit might be instituted on it
against defendant, in the name of E. M. Whist. That action was
brought October 4, 1937, and resulted in a verdict and judgment
against defendant, which was followed by an appeal to this court.
Four agreements in writing, in evidence in that case,
were put in evidence in this case by either plaintiff or defendant:
the first, in point of time, being that of January 22, 1937, the pay-
ment of which was made by defendant to plaintiff. The second, executed
February 27, 1937, and not paid by defendant's attorney, but was not
admitted into the evidence that they were made with the defendant
and plaintiff. The third agreement was executed March 2, 1937, several
months after the maturity of the note defendant refused to pay and
signed by plaintiff, as was the last agreement. All the instruments
were signed by defendant, E. M. Whist, and
the two of February 22, 1937, by the Northwest Bank State Bank (here-
after referred to as the Bank). In none of them was any mention
made of the fact that agreement acknowledged an indebtedness on

the part of Funk, Callahan and defendant, Cleminson, to Jasmund of \$15,000. Only the first acknowledged that 10% of the stock of the proposed corporation was to be given to Jasmund. All the agreements provided that the indebtedness to Jasmund should be paid out of the proceeds of the sale of bonds which were issued and deposited with the bank about February 21, 1927. None of the bonds was ever sold.

Cleminson testified, both in the case of Ehlert v. Cleminson, 253 Ill. App. 346, and in the instant case, that he never borrowed any money from Jasmund personally; that, when he met him in the bank January 31, 1927, Jasmund said that his father was not satisfied with the security for the loan; that he gave that as an excuse for wanting defendant to sign the note; that the witness objected to signing a note at that time, but Jasmund said that he wanted it just as temporary security until the bonds were issued and that the note would be returned to defendant upon the issuance of the bonds; that when Jasmund agreed to return the note at such time as the bonds were deposited with the bank he (Cleminson) signed it; and that on a number of occasions he demanded of Jasmund the return of his note, but that in each instance he was met with a promise of future compliance which was never fulfilled.

Jasmund testified that he owned the note continuously from the time that he received it from Cleminson January 31, 1927, until the trial of this cause, and it is apparent that Ehlert at no time owned the \$15,000 note, but was simply used as a "dummy" to bring the former action against Cleminson in plaintiff's behalf.

On the appeal of the former case to this court it was said in Ehlert v. Cleminson, supra, (certiorari denied by the Supreme Court October 16, 1929) at pp. 343, 350:

"All of them (the four written agreements) provided that the indebtedness to Jasmund should be paid out of the pro-

the part of Bank, California and Belmont, Glavin, to Lammie
of \$15,000. Early the first acknowledged that 10% of the stock
of the proposed corporation was to be given to Lammie. All the
agreements provided that the indebtedness to Lammie should be
paid out of the proceeds of the sale of bonds which were issued
and deposited with the bank about February 21, 1937. None of
the bonds was ever sold.

Glavin testified, both in the case of Whitely v.
Glavin, 235 Ill. App. 3d, and in the instant case, that he
never borrowed any money from Lammie personally; that, when he
met him in the bank January 21, 1937, Lammie said that his father
was not satisfied with the security for the loan; that he gave him
as an excuse for wanting Lammie to sign the note; that the wit-
ness objected to signing a note at that time, but Lammie said that
he wanted it just as temporary security until the bonds were issued
and that the note would be returned to Lammie upon the issuance
of the bonds; that when Lammie agreed to return the note as such
time as the bonds were deposited with the bank he (Glavin) signed
it; and that on a number of occasions he demanded of Lammie the
return of his note, but that in each instance he was met with a
promise of future compliance which was never fulfilled.
Lammie testified that he owned the note continuously
from the time that he received it from Glavin January 21, 1937,
until the trial of this cause, and it is apparent that Whitely at
no time owned the \$15,000 note, but was simply used as a "dummy"
to bring the former action against Glavin in Whitely's behalf.
On the appeal of the former case to this court it was
held in Whitely v. Glavin, 235 Ill. App. 3d, 332,
333: "All of them (the four written agreements) provided
that the indebtedness to Lammie should be paid out of the pro-

ceeds of the sale of the bonds.

"* * *

"The testimony received did not alter or vary the terms of the note in any respect. It simply showed that the instrument was delivered, not absolutely, but upon condition. * * * The promoters of the Club agreed, in writing, to repay to the defendant out of the proceeds of the sale of bonds the \$15,000, and in addition to give him a 10% interest in the corporation to be formed."

Defendant insists that his special plea of estoppel by verdict should have been sustained inasmuch as the controlling question in the case at bar is the construction to be placed upon the written agreements between the parties, and this court having had before it in the prior Shlart case the identical agreements upon which this case is grounded and which are in evidence here, and having construed the contract embraced in those agreements, such construction was binding upon the trial court and is conclusive of the issues in the present case.

In passing upon the question of estoppel by verdict our Supreme Court in Healea v. Verna, 343 Ill. 325, said at pp.331, 332:

"The plea sets up what is known as an estoppel by verdict, which arises when a particular material fact in any litigation has been determined in a former litigation between the same parties or between parties with whom the parties to the subsequent litigation are in privity, in which that fact was also material to the issue. In such case the decision of the question in the former litigation is conclusive upon the parties in the later and also upon all persons in privity with them, and that question cannot be litigated again between the parties in that case or their privies in any subsequent action in the same court or any other court, whether the question arises upon the same or a different cause of action, whatever may have been the nature or purpose of the action in which the judgment was rendered or of that in which the estoppel is set up. (Hanna v. Reed, 108 Ill. 596; People v. Lecklin, 273 id. 100; Winkelman v. Winkelman, 310 id. 268; Hoffman v. Hoffman, 330 id. 413; People v. Hart, 332 id. 467.)

The evidence in this case shows conclusively that plaintiff in the Shlart case was simply a "dummy," and that the real plaintiff there was the plaintiff here; that this action was brought for the identical \$15,000 claimed there and is based upon the identical transaction consisting of the four written agreements before the court in that proceeding; and that, while in the Shlart case the suit was on a note and here the action is in assumpsit, the note

was merely evidence of the same indebtedness which is claimed in this cause. This court found, in effect, in the Elbert case that no personal liability attached to Clemmison upon the note or otherwise, and that the same contract before the court in that case, consisting of the four written agreements, clearly specified that the \$15,000 indebtedness to Jasmund should be paid out of the proceeds of the sale of the bonds deposited in escrow with the bank. That material and controlling question, having been previously determined by this court adversely to plaintiff, is decisive of the issue presented here where it is sought to hold defendant personally liable for the indebtedness.

Under the rule of estoppel by verdict, it is not a decision on the law to be applied in a case that is conclusive upon the parties in subsequent litigation, but the determination of a controlling fact or matter in issue which is again put in issue in the subsequent litigation. (Little v. Blue Goose Motor Coach Co., 346 Ill. 266; People v. L. & W. R. R. Co., 350 id. 274; Harding Co. v. Harding, 352 id. 417.) One, at least, of the material and controlling facts that determined the judgment of this court in the Elbert case was the question as to where plaintiff had to look for payment of the indebtedness, and that issue being common to the two cases the rule of estoppel by verdict is applicable. Whether the adjudication relied upon as an estoppel goes to a single question or all the questions involved in the case, the fundamental principle upon which it is allowed is that justice and public policy alike demand that a matter, whether consisting of one or many questions, which has solemnly been adjudicated in a court of competent jurisdiction shall be deemed finally and conclusively settled in any subsequent litigation between the same parties, or those in privity with them, where the same question or questions arise. (Little v. Bridges, 105 Ill. 336; City of Chicago v. Partridge, 248 id. 442; Chicago Terminal Ry. Co. v. Barrett,

7 - Testimony, 218 id. 442; Chicago Technical Ry. Co. v. Harwood,
questioned unless Illinois v. Erickson, 209 Ill. 265, 218 id. 443.

sist, or those in rivalry with them, where the same question is
collectively raised in any subsequent litigation between the two par-
ties in a court of competent jurisdiction shall be deemed finally and com-
clusive of one or more questions, which have previously been adjudicated
is that justice and public policy alike demand that a matter, decided
involved in the case, the fundamental principle upon which it is allowed
upon as so referred goes to a single question or all the questions im-
of testimony by verdict is applicable. Whether the application raised
independent, and that issue being common to the two cases the rule
The question as to whose plaintiff had to look for payment of the
that determined the judgment of this court in the Illinois case was
382 id. 417.) Two, at least, of the material and controlling facts
People v. L. & N. R. Co., 230 Ill. 274; Harding et al. v. Harding,
litigation. (Littie v. Fine Goods Motor Coach Co., 240 Ill. 505;

fact or matter in issue which is again put in issue in the subsequent
ties in subsequent litigation, but the determination of a controlling
on the law to be applied in a case shall be conclusive upon the par-
Under the rule of estoppel by verdict, it is not a decision
usually liable for the falsification.

The issues presented here show that it is sought to hold defendant non-
determined by this court adversely to plaintiff, he declines to
That material and controlling question, having been previously
proceeds at the sale of the board, placed in error with the bank.
that the defendant's responsibility is limited should be held out of the
case, consideration of the fact stated immediately above is required

otherwise, and that the same conflict before the court in two
no personal liability attached to defendant upon the note or
this course. This court found, in effect, in the Illinois case that
not merely evidence of the new indebtedness which is claimed in

252 Id. 86; Healea v. Verne, supra; Harding Co. v. Harding, supra.)

Many other points have been urged but we deem it unnecessary to discuss them in view of our conclusion that the rule of estoppel by verdict is applicable to and decisive of the material and controlling question presented for our determination in this case.

For the reasons indicated herein the judgment of the Superior court is reversed and the cause is remanded with directions to sustain defendant's special plea of estoppel by verdict and to enter judgment for defendant.

REVERSED AND REMANDED WITH
DIRECTIONS.

Scanlan, P. J., and Friend, J., concur.

38008

VYTAUTO BUILDING & LOAN ASSOCIATION,
a corporation,

Appellant,

v.

JOHN J. KOLP, ANTON LITWIN and
AGNES LITWIN (defendants below).

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

ANTON LITWIN and AGNES LITWIN,
Appellees.

282 I.A. 624²

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT:

Judgment by confession for \$1,221.75 was entered November 13, 1933, in favor of Vytauto Building & Loan Association (hereinafter referred to as the Association) and against John J. Kolp, the maker, and Anton and Agnes Litwin, alleged guarantors, of a demand promissory note for \$1,000. Upon the amended petition of defendants Anton and Agnes Litwin, they were granted leave to appear and defend, the judgment to stand as security. November 16, 1934, a verdict was rendered by a jury, finding the issues against plaintiff. November 24, 1934, the court rendered final judgment upon the verdict against plaintiff and vacated the judgment theretofore entered by confession against Anton and Agnes Litwin. This appeal followed.

The material allegations of the Litwins' amended petition to vacate the judgment by confession are that they were stockholders in plaintiff association and that defendant John J. Kolp was its secretary; that Kolp delivered to them at the office of the association certificates of paid up stock in the association; that at the time of such delivery he requested them to sign a paper, which he fraudulently represented was a receipt for the certificates

1000

THE UNITED STATES OF AMERICA
DISTRICT COURT OF THE DISTRICT OF COLUMBIA

IN RE: THE ESTATE OF
JAMES A. HARRIS

JOHN J. HARRIS, Plaintiff,
vs.
JAMES A. HARRIS, Defendant.

COMES NOW the Plaintiff and files this
petition.

2021.A.024

AND WHEREFORE prays that the Court do so order.

That the Plaintiff is the sole and true owner of the
estate of James A. Harris, deceased, and that the
Defendant is the only person who claims to be the
owner of the same. That the Plaintiff has been
in possession of the estate since the death of
James A. Harris, and has paid all the debts and
expenses of the estate. That the Defendant has
been in possession of the estate since the death
of James A. Harris, and has not paid any of the
debts or expenses of the estate. That the
Plaintiff is entitled to the possession of the
estate, and to the payment of the debts and
expenses of the estate. That the Defendant is
not entitled to the possession of the estate, and
is not entitled to the payment of the debts and
expenses of the estate.

That the Plaintiff is entitled to the possession of the
estate, and to the payment of the debts and
expenses of the estate. That the Defendant is
not entitled to the possession of the estate, and
is not entitled to the payment of the debts and
expenses of the estate. That the Plaintiff is
entitled to the possession of the estate, and to
the payment of the debts and expenses of the
estate. That the Defendant is not entitled to
the possession of the estate, and is not entitled
to the payment of the debts and expenses of the
estate.

of stock; that they believed this representation to be true and, being unable to read or write the English language, signed the purported receipt and never knew that the instrument which they had signed was a guaranty of Kelp's demand promissory note for \$1,000 payable to plaintiff's order, until served with an execution in December, 1933, pursuant to the judgment by confession entered on such note; and that the fraudulent transaction in question occurred because of plaintiff's negligent and willful conduct in permitting Kelp to transact business as its secretary.

Plaintiff contends that Kelp delivered the note to the association and that it paid him in good faith the consideration of \$1,000 specified therein without notice or knowledge of any fraud or circumvention that he may have practiced on defendants Anton and Agnes Litwin, whereby he induced them to sign the note as guarantors; that their guaranty being absolute plaintiff was not required to make demand on the maker, Kelp, for payment of the note nor to give the guarantors notice of Kelp's failure to pay same; that in their contract of guaranty the guarantors expressly waived notice of demand on the maker of the note for payment; that the amended petition, which was ordered to stand as defendants' affidavit of merits, does not state a defense in that it does not allege that plaintiff had notice or knowledge^{of}/er was in anywise implicated in the alleged fraud practiced by Kelp upon the Litwins; that, if Kelp did, in fact, procure the guarantors to sign the note by fraud and circumvention and secured the loan from plaintiff upon the faith of his and their signatures upon the note, thereby perpetrating fraud upon both plaintiff and the guarantors, he was not acting as the agent of plaintiff in that transaction, and notice or knowledge of the fraud practiced by him upon the guarantors cannot be imputed to the association; that, if the Litwins signed the instrument without having had it read to them and totally ignorant of its contents, they were guilty of a gross

of which they believed this representation to be true and,
being unable to read or write the English language, signed the
promised receipt and never knew that the instrument which they had
signed was a guarantee of help's honest promissory note for \$1,000.
According to Plaintiff's order, which will be specified in
Paragraph 1, 1935, pursuant to the judgment by confession entered on
such note; and that the Plaintiff's representation in question concerning
the nature of Plaintiff's alleged and alleged contract in providing
help to Plaintiff's business as its necessary.
Plaintiff contends that help delivered the note to the
association and that it paid him in good faith the consideration
of \$1,000 without thereby giving notice or knowledge of any fraud
or circumvention that he may have practiced on Plaintiff's order and
upon Plaintiff, whereby he induced them to sign the note as guarantors;
that their guaranty being absolute Plaintiff was not required to
make demand on the maker, help, for payment of the note nor to give
the guarantee notice of help's failure to pay same; that in their
contract of guaranty the guarantors expressly waived notice of demand
on the maker of the note for payment; that the guarantors' position,
which was ordered to stand as defendants' affidavit of truth, does
not make a defense in that it does not allege that Plaintiff had
notice or knowledge ^{or} was in anywise implicated in the alleged fraud
practiced by help upon the Plaintiff; that, in help's, to Plaintiff, was
made the guarantors to sign the note by fraud and circumvention and
against the law from Plaintiff upon the basis of note and their own
waiver upon the note, whereby guaranteeing it and upon both Plaintiff
and the guarantors, he was not acting as the agent of Plaintiff in
that transaction, and notice or knowledge of the fraud practiced by
him upon the guarantors cannot be imputed to the association; that,
if the Plaintiff signed the instrument without notice that it was

want of care and caution in executing the guaranty and should bear the loss; ^{and} that they did not prove by a preponderance of the evidence that they were induced to sign the note by fraud and circumvention practiced upon them by Zolp.

The theory of defendants Anton and Agnes Litwin, as stated in their brief, is that, their execution of the guaranty having been procured by fraud and circumvention, plaintiff's claim against them is barred under sec. 10 of the Negotiable Instruments act; and that the question of their due care and caution in executing the guaranty of the note was an element for the jury to consider with the other evidence as to whether their signatures were obtained by fraud.

Zolp was president of the association and not its secretary at the time of the occurrence in question, and he was thereafter sentenced to the penitentiary on charges unrelated to the transaction in controversy here. The signatures of the Litwins to the alleged guaranty of Zolp's note are admitted. In October, 1927, they applied for membership in and subscribed for shares of stock of plaintiff association, for which they paid at the rate of \$100 a month, which payments were recorded in a "pass book." They discontinued their payments in December, 1931, at which time the amount they had paid to the association was sufficient to entitle them to certificates for \$5,300 paid up shares of stock. They made several demands for the return of their money but were advised by Zolp, and others, that because of economic conditions their money could not be presently returned, but that they would be given certificates of stock on account of same.

One Pierzynski testified that he was secretary of the association and had been such since 1924; that he kept all its books and securities, was custodian of all its records and documents; and that he devoted all his time to its business; that Zolp, as president of the association, received a salary of \$5 a week and that his

most of these and another in ascending the primary and secondary
the fossil, they all are given by a representation of the various
that they were intended to give the same by lines and illustrations

illustrated upon them by large

The theory of development from the fossil, as stated
in their brief, is that, their evolution of the primary having been
produced by lines and illustrations, illustrating a similar evolution from
in the fossil, and that, it of the fossil, illustrating that and that
the question as to the fossil and evolution in ascending the primary
of the fossil and no doubt for the fossil is similar with the other

without as to the fossil, illustrating that and that

help was given of the fossil, and that the fossil
at the time of the evolution in question, and the evolution was
based on the fossil, and the evolution was the evolution in
evolutionary form. The evolution of the fossil is the fossil

evolution of the fossil, and the evolution, in evolution, they evolved
for evolution, and the evolution for evolution of evolution
evolution, for evolution, and the evolution of evolution, which
evolution was evolved in a fossil form. The evolution of evolution

evolution in evolution, 1911, as evolution, and the evolution, and the
for the evolution, and the evolution in evolution, and the evolution for
is, the evolution of evolution, and the evolution, and the evolution

evolution of evolution, and the evolution, and the evolution, and the
evolution of evolution, and the evolution, and the evolution, and the
evolution, and the evolution, and the evolution, and the evolution

of evolution

The evolution, illustrating that the evolution of the
evolution, and the evolution, and the evolution, and the evolution
evolution, and the evolution, and the evolution, and the evolution
evolution, and the evolution, and the evolution, and the evolution

at the evolution, illustrating that the evolution of the evolution

principal duty was to preside at the meetings of its board of directors; that the witness was familiar with the signatures of Zelp and the Litwins; that the note upon which this action was brought bore the true signature of Zelp on its face and the signatures of Agnes and Helen Litwin on its back as guarantors; that, when Zelp presented the note with the aforesaid signatures to him on April 6, 1932, he (Zelp) requested a loan from the association of \$1,000 and turned over the Litwins' pass book; that page 2 of such pass book was entitled "Loan Account" and that on that page the witness placed the stamp, "This account guarantees stock loan book No. 1559, John J. Zelp," which indicated that a loan was made on Zelp's pass book account, which was No. 1559, and that it was guaranteed by the Litwins' pass book account; that on the face of the note under the printed caption, "This stock loan is guaranteed by book No.," he indorsed the figures 653, which was the number of the Litwins' pass book, and that on the back of the note after "book No." he indorsed the same number; that he placed the Litwins' pass book in the customers' rack kept for the purpose; that he then drew a check for \$1,000 to the order of Zelp, which was signed by Zelp as president and Pierzynski as secretary, and countersigned by one Hzeraki as treasurer; that this check was delivered to Zelp, who indorsed and cashed it the same day at the Universal State Bank, upon which it was drawn; that the witness next saw the Litwins' pass book on July 2, 1932, when it was turned over to him by them at the office of the association in exchange for six certificates of paid up shares of stock of the association issued to Helen and Agnes Litwin, five of them for \$1,000 each and the other for \$300; and that he delivered these six certificates to the Litwins, but before doing so placed upon the upper right margin of certificate No. 659 a stamp reading, "This certificate guarantees stock loan book No. 1559," and that after this inscription, and on the bottom line of such stamp, he wrote "John J. Zelp."

Both of the Litwins testified that they had known Zolp for about eighteen years; that both before and after they became members of the association he looked after certain real estate deals for them, made out bills of sale, paid their bills, paid interest on their mortgages, and paid their taxes; and that after they joined the association he received most of their payments, receipted for same, and in general transacted the association's business with them. The Litwins also testified that they were Lithuanians and could neither read nor write the English language. Anton Litwin stated that, when the paper in question was presented by Zolp to him and his wife at their home for their signatures, "He put some pieces of paper up there in blank. He said 'sign on the paper Mr. and Mrs. Litwin. You get all your money. You get paid. You get all your money.' Well, we can read nothing, we believe him. For a long time we believe him. We sign the paper and we don't get our money." Litwin also stated that it was Zolp who delivered the certificates of paid up stock to him and his wife July 2, 1932.

Agnes Litwin testified that when Zolp secured the signatures of herself and husband to the instrument he presented to them on April 6, 1932, he "came to my house and bring a bunch of papers, plain papers it was. He said to me 'sign for to get certificates.'" She also testified that Zolp did not inform them that the paper that she and her husband signed was a guaranty of his note to the association, but told them that it "was a transfer paper from the back to certificates." She further testified that the upper right portion of two of the certificates was torn from them when Zolp delivered the certificates to Anton Litwin and herself July 2, 1932; and that her husband retained the certificates in his possession until August, 1933, when she secured a divorce from him and he delivered them to her, assigning his interest therein as part of his alimony settlement.

No attempt was made at the trial to show that plaintiff had

any actual knowledge of the alleged fraud perpetrated upon the Litwins by Zelp. The only theory upon which the association could be charged with notice of the fraud would be that because Zelp was its president his knowledge would be imputed to it. He was a member of the association and entitled to borrow money from it upon his guaranteed notes as were the other members. When he secured the signature of the Litwins to the guaranty on April 6, 1932, he was dealing strictly on his own account and was not engaged in the business of plaintiff. It will hardly be presumed that if Zelp procured the Litwins to sign the guaranty on the note by fraud and circumvention to enable him to secure the loan from the association, he would disclose this fraud to his principal and thereby defeat the object he had in view. To the general rule that notice to the agent is notice to the principal there is a well defined exception that notice will not be imputed to the principal where the facts authorize the inference that the agent will conceal the information. The presumption then is that the agent will conceal such information where it would be detrimental to his interests to disclose the facts. (Merchants Nat. Bank v. Nichols & Co., 223 Ill. 41; Cowan v. Curran, 216 Id. 590; 2 Corpus Juris, sec. 549, pp. 868, 870.) The facts and circumstances surrounding Zelp's transaction with the Litwins are such as to make it reasonably certain that he would not communicate to plaintiff information concerning any trick or device he may have used to secure their guaranty.

Plaintiff not being chargeable with its agent Zelp's knowledge of the alleged fraud and with no evidence in the record of actual notice or knowledge to it of any fraud perpetrated on the Litwins, is the association's right to recover on the note in question barred by par. 11, sec. 10 of the Negotiable Instruments Act (ch. 95, Ill. State Bar Stats. 1935)? This section of the statute provides:

"If any fraud or circumvention be used in obtaining the making or executing of any of the instruments aforesaid, such fraud or circumvention may be pleaded in bar to any action to be brought on any such instrument so obtained, whether such action be brought by the party committing such fraud or circumvention, or any assignee of such instrument."

In Anderson v. Warne, 71 Ill. 80, it was sought to avoid payment on the ground that the note was obtained by fraud and circumvention. There one Brusher applied to the payee for a loan of \$100, which he received upon delivering to the payee his note for that amount with one Anderson as security. The payee had no reason to suspect that it was not a fair transaction. There was nothing in the circumstances to excite suspicion in the payee's mind. Anderson claimed that he was deceived into signing the note and that "Brusher represented to him it was an 'identity paper,' to enable him to procure his bounty from the payee." In that case the court said at pp. 80, 11-2:

" * * * This defense can not be maintained. The wrongful conduct shown was between the makers, and was not participated in by the payee. He was guilty of no fraudulent practices whatever. * * *
 " * * * But if it be conceded Brusher was guilty of fraudulent practices in procuring the execution of the note, and that he obtained its execution under the belief it was an 'identity paper,' this fact would not change the decision. There was no fraud on the part of the payee, and his rights can not be affected by any fraud practiced between the makers of the note. The statute only renders the note void when the payee commits, procures, or has knowledge of the fraud before he receives the instrument. He must have participated in the wrongful conduct. Where the payee is free from all fraud or participation in procuring the execution of the instrument, he can not be held responsible for the wrong inflicted, but it is otherwise when he is, by any means, a party to it. Ester v. Minard, 26 Ill. 494; Young v. Ward, 21 Ill. 223."

As a general rule, in the United States, when a principal obligor has induced his surety or guarantor to sign an instrument by false or fraudulent representations, such misrepresentations may not be set up by the surety or guarantor as a defense to an action on the instrument or guaranty unless the obligee or guarantee had notice of, or participated in, such fraud. (71 A. L. R. 1378.)

Defendants have cited no case and we have found no authority that either questions or contravenes this principle of law. The instant case, as well as Anderson v. Warne, supra, and Young v. Food, 21 Ill.

223, are readily distinguishable from Hubbard v. Rankin, 71 Ill. 129, Hewitt v. Jones, 72 Ill. 218, and/ cited by defendants as sustaining the principle that it is immaterial that plaintiff had no knowledge of Zelp's alleged fraud. In the latter cases it was the payee who had induced the maker to execute the instrument by falsely representing that it was not a note but something else, and those cases, therefore, came squarely within the purview of sec. 10 of the Negotiable Instruments Act.

The following peremptory instructions were given to the jury:

"1. The jury are instructed that if they believe from the evidence in this case that John J. Zelp obtained the signatures of Anton Litwin and Agnes Litwin herein to the note used upon by fraud and circumvention that then plaintiff cannot recover in this case."

"2. The jury are instructed that the promissory note of John J. Zelp being made payable on demand to the Vytaute Building & Loan Association the law of Illinois requires that presentment for payment of said note should be made within a reasonable time after the date thereof and if the jury believe from the evidence in this case that said note was not presented to said John J. Zelp for payment at a reasonable time after the date thereof or never presented to him then plaintiff cannot recover."

"3. The jury are instructed that if they believe from the evidence in this case that the defendants, Agnes Litwin and Anton Litwin, cannot read the English language and that the note in question on which suit has been brought in this case was brought to her home by one John J. Zelp, the maker thereof, and that she was unable to read the same and that the said John J. Zelp informed them that the paper she was signing was a receipt or transfer of her bank account in the Vytaute Building & Loan Association necessary to be signed by them before they could obtain certificates from said association and that they believing this to be true signed the same without any knowledge that it was intended as a guaranty for the payment of a note of John J. Zelp to the plaintiff for the sum of \$1,000, then the plaintiff cannot recover and your verdict must be for said defendants."

"4. The Court instructs the jury that if you believe from the evidence that at the time that the signatures of the defendants, Anton Litwin and Agnes Litwin were placed on said note that the said John J. Zelp told the defendants, Anton Litwin and Agnes Litwin that the paper they were signing was one that was necessary for them to sign in order to recover the money they had on deposit with the Vytaute Building & Loan Association and the defendants did not know that the same was a guaranty of a promissory note that then your verdict must be for the defendants."

The second instruction eliminates from the consideration of the jury the question of the execution of the guaranty by the Litwins without fraud or circumvention on Zelp's part and does not

and, the latter being the only one who was present at the time of the shooting. The fact that the latter was the only one who was present at the time of the shooting is a fact which is not in dispute.

The fact that the latter was the only one who was present at the time of the shooting is a fact which is not in dispute. The fact that the latter was the only one who was present at the time of the shooting is a fact which is not in dispute. The fact that the latter was the only one who was present at the time of the shooting is a fact which is not in dispute.

The following testimony is given by the jury. The jury are instructed that if they believe from the evidence in this case that John J. Kelly was the person who shot the victim, they should find him guilty of the crime charged. If they believe from the evidence in this case that John J. Kelly was not the person who shot the victim, they should find him not guilty.

The jury are instructed that if they believe from the evidence in this case that John J. Kelly was the person who shot the victim, they should find him guilty of the crime charged. If they believe from the evidence in this case that John J. Kelly was not the person who shot the victim, they should find him not guilty.

The jury are instructed that if they believe from the evidence in this case that John J. Kelly was the person who shot the victim, they should find him guilty of the crime charged. If they believe from the evidence in this case that John J. Kelly was not the person who shot the victim, they should find him not guilty.

The jury are instructed that if they believe from the evidence in this case that John J. Kelly was the person who shot the victim, they should find him guilty of the crime charged. If they believe from the evidence in this case that John J. Kelly was not the person who shot the victim, they should find him not guilty.

The jury are instructed that if they believe from the evidence in this case that John J. Kelly was the person who shot the victim, they should find him guilty of the crime charged. If they believe from the evidence in this case that John J. Kelly was not the person who shot the victim, they should find him not guilty.

state correctly the law applicable to liability on an absolute guaranty.

Instructions 1, 3 and 4 are clearly erroneous in the light of the established rule of law that, under such facts as are disclosed by the record in this case, knowledge of the payee of the note of the fraud charged is a material and vital element. By these instructions the jury was told in unmistakable language that if it believed from the evidence that Telp perpetrated the fraud plaintiff could not recover. The question of whether plaintiff had any notice or knowledge of or participated in the fraud was not submitted to the jury at all, and the jury was told in effect that if it found that Telp had perpetrated the fraud charged it must find against plaintiff, regardless of whether the Litwins failed to exercise due care and caution in executing the guaranty, and regardless of whether or not plaintiff had any notice of Telp's fraud. Instructions were also given which were directly contradictory of each other and which could have had no other effect than to confuse and mislead the jury.

The errors pointed out and others that we deem it unnecessary to discuss necessitate the reversal of the judgment; and, inasmuch as the case will in all likelihood be retried, we refrain from discussing the facts and the weight of the evidence.

The judgment of the municipal court is reversed and the cause is remanded.

REVERSED AND REMANDED.

Scanlan, P. J., and Friend, J., concur.

1. The first of these is the fact that the

2012年12月12日 星期一 12:12

[illegible]

The Government of the Municipal Council is required to the

1. *Chrysomelidae*

[illegible]

38029

CHICAGO TITLE & TRUST COMPANY,
a corporation, as trustee,
Appellee,

v.

BURRELL J. GRAMER and MAMIE I.
GRAMER,
Appellants.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

22 A
282 I.A. 624³

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

September 27, 1934, by stipulation, judgment for possession was awarded plaintiff, Chicago Title & Trust Company, as trustee, in its forcible detainer action against defendants, Burrell J. Gramer, who is a lawyer, and his wife, Mamie I. Gramer. On the same day an order was entered staying the writ of restitution until October 24, 1934. Defendants' motion supported by affidavit to vacate the judgment of September 27, 1934, was denied October 23, 1934. By this appeal defendants seek to reverse the order denying their motion to vacate the judgment and to have the trial court directed to sustain said motion.

It appeared that Mrs. Gramer had owned the premises in question located at 4857 Christiana Avenue, Chicago, since 1913, and that she and her husband together with their family occupied and now occupy said premises; that she had executed a trust deed to this property to plaintiff to secure her loan of \$6,000; that upon default, under the terms of the trust deed, plaintiff instituted foreclosure proceedings, and, neither of the defendants appearing, a decree of foreclosure was entered and the premises ordered sold; that March 21, 1933, plaintiff bid in the property and received a

master's certificate; that plaintiff was entitled to a master's deed June 21, 1934, but because the master who had made the sale was no longer in office it did not receive the master's deed until July 11, 1934, and then from another master empowered to act; and that in consideration of plaintiff permitting defendants to remain in possession of the premises the following agreement was executed by Cramer:

"Chicago Title and Trust Company,
69 West Washington Street,
Chicago, Illinois.

Gentlemen:

In consideration of your agreement to refrain from instituting forcible entry and detainer proceedings, I hereby agree to voluntarily vacate the premises located at 4857 Christiana Avenue on or before July 21st without any costs or expenses to you.

Yours very truly,

Burrell J. Cramer,

Dated this 22nd day of June, 1934, at Chicago."

It further appeared that defendants failed to vacate on July 21, 1934, and shortly thereafter plaintiff entered into another arrangement with Cramer whereby it was agreed that if defendants were permitted to remain in possession until September 15, 1934, he would pay \$45 for rent up to July 21, 1934, and on or before August 21, 1934, would pay the rent in full for the period from July 21, 1934, to September 15, 1934. As evidence of this agreement Cramer signed the following instrument:

"Chicago, July 28, 1934.

Received from Burrell J. Cramer forty-five and no/100 (\$45.00) dollars in payment of rent for the premises located at 4857 Christiana Avenue, Chicago, for the period beginning June 21, 1934, and ending July 21, 1934.

It is understood that Mr. Cramer is a tenant upon a month to month basis and that he will vacate the premises on or before September 15, 1934.

Chicago Title and Trust Company,
By Robert L. Burch,
Assistant Trust Officer."

It also appeared that defendants failed and refused to pay the rent due August 21, 1934, and that after numerous unsuccessful demands had been made upon them for such rent, plaintiff caused a

master's certificate; that plaintiff was entitled to a master's
 deed June 15, 1914, but because the master did not make the same
 was no longer in effect; and that plaintiff was entitled to a
 July 15, 1914, and from another master's certificate to him; and
 that in connection of plaintiff's pending application to remain
 in possession of the premises the following agreement was entered

by contract:

"Chicago Title and Trust Company,
 22 West Washington Street,
 Chicago, Illinois."

Continued:

In consideration of your agreement to return from lease-
 holding property and certain proceeds, I hereby agree to
 voluntarily release the premises located at 1234 Chicago Street
 on or before July 15, 1914, and on or before July 15, 1914,
 Yours very truly,
 Edward J. Barker,
 Dated this 15th day of June, 1914, at Chicago."

It further appeared that defendant failed to comply on
 July 15, 1914, and thereby plaintiff failed to receive the
 arrangement with Barker whereby it was agreed that if defendant were
 permitted to remain in possession until September 15, 1914, he could
 pay \$15 per month up to July 15, 1914, and on or before August 15,
 1914, would pay the rest in full for the period from July 15, 1914,
 a balance of \$15, 1914. In evidence of this agreement Barker placed

the following instrument:

"Chicago Title and Trust Company,
 22 West Washington Street,
 Chicago, Illinois,
 Dated this 15th day of June, 1914,
 Edward J. Barker, 1234 Chicago Street,
 Chicago, Illinois, for the period beginning June 15,
 1914, and ending July 15, 1914.
 It is understood that Mr. Barker is a tenant upon a
 month to month basis and that he will vacate the premises on or
 before September 15, 1914.
 Chicago Title and Trust Company,
 By Robert L. Barker,
 President of said company."

It also appeared that defendant failed and refused to pay
 the rent due August 15, 1914, and that after numerous communications
 defendant had been made upon which such rent, plaintiff would a

notice to be served upon them September 8, 1934, advising that if the rent was not paid on or before September 13, 1934, the lease would be terminated; that the forcible detainer action involved here was filed September 14, 1934, and was made returnable September 24, 1934; that September 22, 1934, Cramer requested that he be given a short time within which to raise money to pay the back rent and complete negotiations for a "home loan" to redeem or repurchase the property; that September 27, 1934, plaintiff's judgment for possession was entered in the forcible detainer suit pursuant to a written stipulation, which is as follows:

"IT IS HEREBY STIPULATED AND AGREED BY and between the parties hereto, by their respective attorneys, that a finding of guilty may be entered against the defendants and each of them, and judgment for possession of the premises known as 4857 N. Christiana Ave., and two car garage described in the complaint, but that the Writ of Restitution to be issued thereunder should be stayed until and including October 24, 1934, with respect to which judgment the said defendants, and each of them, expressly waive all error and right of appeal.

"Defendants only right to vacate said judgment and * * * to ask for a further stay of the Writ of Restitution is subject to the following conditions:

"1. That on or before October 20, 1934, they shall have paid to the Chicago Title & Trust Company, as trustee, \$135, \$90 of which represents back rent due for said premises for the period from July 21, 1934, to September 20, 1934, inclusive, and \$45 for rent for said premises from September 21, 1934, to October 20, 1934, inclusive. Time is of the essence of this provision and unless said \$135 has been paid in full on or before said October 20, 1934, said Writ of Restitution shall issue as of October 24, 1934, said defendants expressly agree to make no further request for the extension of said Writ of Restitution, as provided for in paragraph (2) hereafter, if the provisions of this paragraph have not been fully complied with.

"2. WHEREAS, heretofore the defendant, MARIE I. CRAMER, was the owner in fee simple of the premises in question upon which there was a trust deed in the sum of six thousand dollars (\$6,000), and whereas thereafter, because of certain defaults in the keeping of the covenants of said trust deed, certain foreclosure proceedings were instituted against said defendants and each of them and thereafter a decree of foreclosure followed and sale of said premises was had pursuant to said decree and said plaintiff, as trustee, under trust Liv. 23280, purchased said premises at said sale and obtained a master's certificate therefor, and whereas, thereafter on June 21, 1934, the period of redemption of said premises from said sale expired, prior to which said defendants, nor either of them, nor any other person, had redeemed from said sale and CHICAGO TITLE AND TRUST COMPANY, as such trustee, obtained a master's deed therefor and is now the owner of said premises as such trustee, and whereas the defendants thereafter, with a view of obtaining a loan from the Federal Home Owners Loan Corporation, certain application number 72190 was made with said Home Owners Loan Corporation and is now pending.

"AND WHEREAS said defendants believe that they will be successful in securing said loan in an amount sufficient to pay all sums of money which have heretofore become due and owing under the terms of the trust deed so foreclosed to said plaintiff.

"NOW, THEREFORE, it is further agreed:

"(a) That if said defendants shall have paid to the plaintiff the \$135, as provided for in Paragraph 1, they shall have the right to ask for a further stay of the Writ of Restitution from month to month for a period not to exceed six months from the date of the entry of this judgment provided further that they have paid in advance to the Chicago Title & Trust Co., as trustee, the sum of \$45 for rent for the premises for the period for which the Writ of Restitution is further stayed. If at any time defendants have failed to pay said rent in advance, or are in default in the payment of rent, they shall have no right to ask for a further stay of said Writ of Restitution.

"(b) If at any time it develops that the said H.O.L.C. is unwilling to make said loan or that said loan to be made is insufficient to pay all sums due under said trust deed, said writ of restitution shall issue and the said defendants will vacate said premises forthwith.

"(c) Under no circumstances shall said Writ of Restitution be extended for a period longer than six months from September 24, 1934."

As heretofore noted defendants' motion of October 22, 1934, to vacate plaintiff's judgment for possession entered on this stipulation was denied.

Defendants contend that the judgment for possession should be vacated because consent to its entry was induced by a false representation of fact at a time when they had a defense to the action. The false representation complained of is that on June 22, 1934, when the first agreement was entered into to permit defendants to remain in the premises, plaintiff advised Gramer that it had secured a master's deed to the premises June 21, 1934, when it did not in fact receive such deed until July 11, 1934. It is urged that this misrepresentation repeated on the occasion of the second agreement July 26, 1934, and in the stipulation of September 27, 1934, constituted such fraud as should have impelled the trial court to vacate the judgment, and that it was an abuse of its discretion not to have done so. In other words, plaintiff not having received the master's deed until July 11, 1934, had no title to the premises and was not entitled to receive rent therefrom until then, and its representations on June 22, 1934, July

Under the terms of the lease, the land was to be used for the purpose of a school and the land was to be used for the purpose of a school and the land was to be used for the purpose of a school.

; h o s t e r u n d e r t i l d e m . 1 9 7 0 .

1. The Commission has the honor to acknowledge the receipt of your letter of the 14th of March, 1944, in which you request that the Commission should make a study of the situation in the field of the labor market in the United States, and that it should make a report to the President of the United States on the results of such study.

(11) If at any time it develops that the work is not being done in accordance with the approved programme, the Committee may recommend that the work be stopped or that the programme be modified.

1. The first of these is the fact that the Government has been unable to secure the cooperation of the private sector in the development of the country's infrastructure. This is due to a number of factors, including the lack of a clear legal framework for private investment, the absence of a reliable judicial system, and the prevalence of corruption. As a result, the Government has been forced to rely on foreign aid and loans to finance its development programs.

"(c) There are no circumstances which will allow a person to be charged with a crime if he has been previously convicted of a crime." b6

b7C

As discussed in the preceding section, the data on the number of people who have been arrested for drug offenses in the United States is presented in Table 1. The data shows that the number of people arrested for drug offenses has increased significantly over the past decade, with a particularly sharp increase in the number of people arrested for possession of a controlled substance.

...and the ...

...beim 1. und 2. Mal ...

United States of America

Approved by the Board of Directors

...and the fact that the ...

He has no representation on the board of the company, which

At present, it is estimated that the total number of persons who are currently in the country is approximately 100,000.

the previous, classified advised that it had no information.

and to the President James M. Smith, June 11, 1845, when I was in that office.

THE UNIVERSITY OF CHICAGO PRESS

At home, I will, I am sure, find some one who has been

RECEIVED DIRECTOR, FBI, JULY 26 1961

1961-1962, 1963-1964, 1965-1966, 1967-1968, 1969-1970, 1971-1972, 1973-1974, 1975-1976, 1977-1978, 1979-1980, 1981-1982, 1983-1984, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994, 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 2691-2692, 2693-2694, 2695-2696, 2697-2698, 2699-2700, 2701-2702, 2703-2704, 27

[illegible]

1992, 11 July. From back a 'strange old' servant, named 'po' 21/2/92.

NO STATE TO THE UNIVERSITY AND THE UNIVERSITY OF THE STATE OF NEW YORK

SECRET - 1987 RELEASE UNDER E.O. 14176

25, 1934, and in the stipulation of September 27, 1934, that it had received the master's deed June 21, 1934, were knowingly, intentionally and fraudulently calculated to induce defendants to consent to the entry of the judgment for possession September 27, 1934.

It is reasonable to infer from the record that Cramer, anxious to remain in the premises pending his negotiations for the home loan, and knowing that plaintiff was entitled to a master's deed June 21, 1934, the foreclosure sale having taken place March 21, 1933, in his dealings with plaintiff just prior to June 21, 1933, anticipated that it would receive a master's deed on that date and in his dealings thereafter supposed that it had received the deed on that date. While it does not clearly appear from the record at whose instance the date of the master's deed was made to appear in the stipulation as June 21, 1934, Cramer drew that document after its terms had been largely dictated, according to him, by plaintiff, and we think that we may safely assume that the date of the master's deed was thus stated inadvertently on the supposition, apparently of both plaintiff and Cramer, that plaintiff had received the master's deed on the day that it was entitled to receive same.

It is difficult for us to understand how it can be claimed with any degree of candor that the misstatement in the stipulation as to the date of plaintiff's receipt of the master's deed inured in anywise to its benefit, served any ulterior purpose or motive of plaintiff or resulted in any injury or detriment to defendants.

Is there anything in this case that savors of intentional fraud on plaintiff's part? Is there anything to show that plaintiff intentionally deceived defendants to induce them to enter into this stipulation? In their desire to remain in the premises was it material to them on September 27, 1934, when the stipulation was executed and the judgment entered, whether plaintiff had secured title to the premises June 21, 1934, or July 11, 1934? We think not. Fraud pre-

supposes a willful purpose resorted to with intent to deprive another of his legal rights. It added nothing to plaintiff's title or right to possession when the stipulation was entered into to state that it had received the master's deed June 21, 1934, rather than July 11, 1934. To constitute actionable fraud the representations must not only be false but fraudulently made. They must be made with the knowledge that they are false or without knowledge asserted to be true with the intent to have the other party act upon them to his injury and such must be their effect.

We are of the opinion that so long as plaintiff had title and was entitled to possession when the stipulation was made and the judgment entered, it was immaterial whether it acquired title June 21, 1934, or July 11, 1934; that plaintiff did not deliberately misrepresent the date of the master's deed with the intent to deprive defendants of any of their legal rights; that Cramer did not act in reliance upon the date being June 21, 1934, rather than July 11, 1934; and that defendants suffered no injury by reason of the inaccuracy of the date of the deed stated in the stipulation.

Defendants were not only not misled or injured by the stipulation, but accomplished their purpose of remaining in the premises, and then failed to keep their bargain as they had failed to fulfill the terms of their prior agreements. We think the facts alleged in Cramer's affidavit filed in support of the motion to vacate the judgment are wholly insufficient to constitute fraud or misrepresentation.

The only defenses set up in Cramer's affidavit in support of defendants' motion to vacate the judgment were the insufficiency of the service of the five day notice and plaintiff's demand for an excessive amount for rent, i.e., for the period from June 21, 1934, to July 11, 1934, when it did not have title to the premises. It is conceded that

[illegible]

both of these defenses were waived by defendants by their stipulation unless some was induced by fraud.

Inasmuch as such other points as are urged by defendants are predicated upon plaintiff's fraud in inducing the stipulation, in the view we take of this appeal we think it unnecessary to discuss them.

For the reasons indicated herein the order of the municipal court is affirmed.

AFFIRMED.

Scanlan, P. J., and Friend, J., concur.

both of these factors were noted by witnesses for this

testimony which was not noted by them.

Inasmuch as each other points in the story by testimony

and provided that KILLER'S story is correct the following

in the story as told by this group we think is necessary to the

same time.

Now the persons included herein the order of the

following story is as follows:

WITNESSES

Charles E. J., and Henry J., account

38047

ST. PAUL FIRE & MARINE INSURANCE
COMPANY, a corporation,
Appellant,

v.

PATRIOTIC INSURANCE COMPANY OF
AMERICA, a corporation,
Appellee.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

231A.624

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

The St. Paul Fire & Marine Insurance Company brought a fourth class contract action in the municipal court against defendant, Patriotic Insurance Company of America, to compel contribution of a portion of the amount paid by plaintiff under its policy of insurance for the total destruction by fire of a fur coat owned by its assured, which it claims was also covered by defendant's fire insurance policy. After a hearing by the court without a jury the issues were found and judgment rendered against plaintiff. This appeal followed.

Defendant insured Herman Klein against all direct loss or damage by fire to an amount not exceeding \$4,000 on household furniture and other household goods, including wearing apparel, located at 3438 Christians Avenue, Chicago, subject to all the conditions and stipulations contained in its policy. Following the description of the property, and on the same form or rider, in the following clause: "It is hereby stipulated that this policy shall cover also, as per above form, property of guests and servants and all members of assured's family, whether of age or not, except in all cases where such parties held insurance for their own account, in which event this insurance shall not attach. Loss, if any,

to be adjusted with and payable to the assured named in this policy." Plaintiff, by its policy, insured Mrs. Herman Klein, wife of said Herman Klein, against all risks of loss or damage, in the sum of \$460 on a black Persian lamb coat, wherever located.

August 7, 1932, while both policies were in force, the household goods and furniture described in defendant's policy were destroyed or damaged by fire to the amount of \$933.91. Defendant's policy permitted other insurance, and at the time of the fire Herman Klein had another fire insurance policy for \$1,000 in the Springfield Fire & Marine Insurance Company. Klein's loss was adjusted at the amount stated, the defendant paying him \$681.36 and the Springfield Fire & Marine Insurance Company paying \$272.55. The proof of loss rendered to defendant by Klein showed the property for which he made claim. This did not include the black Persian lamb coat, and no claim for the loss of such coat was made under defendant's policy. The same fire destroyed the black Persian lamb coat, which was the property of Mrs. Herman Klein. Plaintiff adjusted the loss on the coat with Mrs. Klein, received from her proof of loss, and thereafter paid her \$325 as the full value of the coat.

Plaintiff contends that the Persian lamb coat in question was covered by both its and defendant's policies and that having paid its assured, Mrs. Klein, her loss in full, and the amount of coverage of defendant's policy not having been exhausted by its payment for the loss and damage by fire to Klein's property, it was entitled to contribution from defendant of its proportionate and equitable share of the amount paid by it.

Defendant's theory is that its policy insuring Herman Klein against loss on his property did not insure his wife against loss on her coat, on which she had insurance on her own account, and was not contributing insurance on the property of his wife. There is no question but that if Mrs. Klein did not procure from

plaintiff a policy specifically covering her fur coat, it would have been covered for loss or damage caused by fire under the policy issued by defendant to her husband. However, while defendant's policy insured Klein against loss or damage by fire to his wife's fur coat and other wearing apparel, the stipulation contained therein that it "shall cover also * * * property of * * * all members of assured's family * * * except in all cases where such parties hold insurance for their own account, in which event this insurance shall not attach," expressly excludes coverage on Mrs. Klein's coat, because she had insurance on same for her own account under plaintiff's policy.

But plaintiff insists that defendant having provided in one paragraph of its policy that "other insurance" was permitted cannot in another paragraph contract with Klein in any manner that would preclude plaintiff as another insurer from its right to contribution from defendant. We think that this contention is without merit. Defendant's policy permitted Klein to procure other fire insurance, which he did, the loss by fire other than to his wife's Persian lamb coat being proximately caused under the two fire insurance policies issued by defendant and the Springfield Fire and Marine Insurance Company. Klein in his proof of loss submitted under the two fire insurance policies made no claim for the loss of his wife's coat. The making of the proof of loss was a condition precedent to defendant's liability under its policy and, in our opinion, it could not be held liable for the loss of any property not included in the proof of loss. Defendant's liability must be measured by its own policy, and plaintiff cannot obtain contribution upon the theory that any provision of defendant's policy is inoperative as to it. Plaintiff specifically insured the fur coat against all risks with certain enumerated exceptions and received a premium for so doing. Mrs. Klein was not required under plaintiff's policy to carry any

plaintiff's policy specifically covered her loss, as would have been covered the loss of damage caused by fire which the policy issued by defendant do not include. However, while defendant's policy covered their insured loss of damage by fire to his wife's two sons and other covered property, the stipulation contained therein that it "shall cover also" a "property of" all members of insured's family - a "property in all cases where such parties have insurance for their own account, in which event this insurance shall not attach," except in included coverage as per. Klein's case, however the fact insurance was made for her own account.

UNDER PLAINTIFF'S POLICY

But plaintiff insists that defendant having provided in

one paragraph of its policy that "other insurance" was provided

cannot in another paragraph contract with Klein in any manner that

would prevent plaintiff as insured against loss of life to be

reimbursed from defendant. It is said that this contract is void

under defendant's policy provision which is contrary to public policy.

Insurance, which is said, the loss by fire other than to his wife's

personal loss and being provided under the two fire insurance policies

issued by defendant and the plaintiff's fire and marine insurance

company. Klein is the owner of loss sustained under the two fire

insurance policies made on claim for the loss of his wife's sons.

The terms of the first of loss was a condition precedent to being

and's liability under its policy and, in any event, it would not

be said Klein for the loss of one property not included in the

group of loss. Defendant's liability would be measured by the two

policies, and plaintiff would obtain double recovery upon the theory

that was violation of defendant's policy as interpreted in its

Contract specifically provided for loss sustained by fire and

marine insurance companies and received a provision for no other

loss Klein was not required under plaintiff's policy to carry any

contributing insurance, and we are not aware of any theory upon which plaintiff, for the loss paid by it on the coat, can compel contribution from defendant.

The rule seems to be generally recognized that where, as here, a general policy of fire insurance includes in its coverage a specific article, but specific insurance is also procured for the same specific article, the specific insurer of such specific article will be held solely liable for its loss or damage without any right of contribution from the other insurer. (Firemen's Fund Insurance Co. v. Western Refrigerating Co., 162 Ill. 352; Peirchild v. Liverpool & London Fire & Life Ins. Co., 31 N. Y. 85; Slots Tailoring Co. v. Eastern Fire Ins. Co., 102 N. Y. Supp. 83; Kimball Bros. Co. v. Palestine Ins. Co., 195 N. Y. 987; Ghor v. Employers' Liability Assur. Corp., 308 Pa. St. 480; Penn v. National Union Indemnity Company, 68 Fed. (2d) 567.)

Contribution between insurers is enforceable only where the policies of the several insurers cover the same property and insure the same interests. The identity of interest is requisite. (Newark Fire Ins. Co. v. Turk, 6 Fed. (2d) 633; Trade Ins. Co. v. Facand, 150 Ill. 345; Niagara Fire Ins. Co. v. Shannon, 144 Ill. 490.) Mrs. Klein was the assured under plaintiff's policy, Herman Klein was the assured under defendant's policy. Different interests were insured under the respective policies. We are of the opinion that the trial court properly held that defendant was not liable for contribution.

Plaintiff urges other points which we have considered, but in the view we take of this cause we deem it unnecessary to discuss them.

For the reasons indicated the judgment of the municipal court is affirmed.

AFFIRMED.

Seanlan, P. J., and Friend, J., concur.

38171

JOSEPHINE GUZA,
Respondent,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a
corporation,
Petitioner.

24 A

PETITION FOR LEAVE TO
APPEAL FROM MUNICIPAL
COURT OF EVANSTON.

282 I.A. 624⁵

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

This is an action by the wife of the insured to recover under the double indemnity provisions of four life insurance policies issued by defendant company. There was a trial before the court and a jury which resulted in a verdict for defendant. The trial court granted a new trial on motion of the attorneys for plaintiff. Defendant has been granted leave to appeal from the order of the trial court granting a new trial pursuant to sec. 77 of the Civil Practice act.

The amended statement of claim alleges that defendant issued three policies for \$500 each and one policy for \$1,000 on the life of John J. Guza, and that each of the policies contained a provision for double indemnity; that Guza died June 24, 1934, as a result directly and independently of all other causes of bodily injuries effected solely through external, violent and accidental means; and that defendant paid plaintiff \$2,500, which is the aggregate of the face amounts of the four policies, but has refused to pay the additional \$2,500 double indemnity.

The amended affidavit of merits of defendant company admits the issuance of the policies and payment of the face amount of the policies in the sum of \$2,500 to plaintiff. It denies that Guza

THE UNITED STATES OF AMERICA
DISTRICT COURT OF THE DISTRICT OF COLUMBIA

VS

THE NATIONAL ASSOCIATION
OF REALTORS
INCORPORATED
Plaintiff

DEFENDANT

282 A.A. 624

IN REPLY TO PETITION FOR WRIT OF HABEAS CORPUS

This is an action by the wife of the deceased to recover under the federal insurance provisions of her life insurance policy issued by defendant company. There was a trial before the court and a jury which resulted in a verdict for defendant. The trial court granted a new trial as matter of the attorney for plaintiff. Defendant has been granted leave to appeal from the order of the trial court granting a new trial pursuant to sec. 17 of the Civil Practice Act.

The amended statement of claim alleges that defendant issued three policies for \$200 each and one policy for \$100 on the life of John J. Jones, and that each of the policies contained a provision for double indemnity. That Jones died June 24, 1914, as a result thereof and independently of all other causes of death injuries received while engaged in his occupation, which are the basis of the claim; and that defendant paid plaintiff \$1,000, which is the aggregate of the face amounts of the four policies, but has refused to pay the additional \$1,000 double indemnity.

The request for writ of habeas corpus is denied on the ground that the insurance was payment of the face amount of the policies in the sum of \$1,000 is plaintiff. It is further stated that

came to his death as a result of bodily injuries sustained solely through external, violent and accidental means within the meaning of the provisions of said policies, but avers that said Gusa came to his death as a result of an injury received in an altercation or fight in which insured was the aggressor and in which altercation or fight insured would be presumed to know that injury or death would be the natural consequence of his own acts and that, therefore, defendant is not liable to plaintiff for any amount.

The trial judge did not, in his order or otherwise, indicate his reason or reasons for granting the new trial. While plaintiff's written motion for a new trial advanced sixteen grounds for its allowance, we need consider only a few of them.

The law is well settled that if there is an altercation or fight in which the insured is the aggressor and which results in his death, such death is not a result of accidental means because in starting and continuing the fight the deceased is bound to have contemplated that the result would be likely to be injurious or fatal to him. (Hutton v. States Accident Ins. Co., 267 Ill. 267; Gory v. Woodmen Accident Co., 333 Ill. 175.)

The controlling issue in this case is well defined. Defendant's theory of fact is that there was a fight in which insured was the aggressor and that in the fight, or as the immediate result of it, he received the injuries that resulted in his death. Plaintiff's theory of fact is that, conceding that deceased was the aggressor in the fight, there was no connection between the fight and the fall of Gusa that resulted in his death, and that the fight was over for an appreciable period of time and Gusa was several feet distant from his adversary and in the act of putting on his coat, which he had picked up from the curb, when he slipped, stumbled or tripped, striking his head on the pavement and thereby receiving the injury which resulted in his death.

There were only two witnesses to the occurrence who testified, Stanley Jeswiak in plaintiff's behalf and Frank Dertz, called by defendant.

Jeswiak testified that he, Dertz, the deceased and two other men met on Ingraham street near Elston Avenue in Chicago on the morning of June 24, 1934, and consumed a pint of whisky; that after lunch they met again and drank another pint of whisky; that he and deceased had been friends for a number of years; that, after drinking the whisky in the afternoon, Guza said to the witness, "You son-of-a-bitch, - -, I am just as good a man as you are;" that Guza then took off his coat and "pulled my shirt off and my underwear off the front;" that "he hit me a couple of times" and "I hit him back two or three times;" that "then he walked away to pick his coat up, had one sleeve on, turned around, got tangled up in the street some way * * * then he fell over backwards;" that Guza was about ten feet away from the witness putting on his coat, and turning around when "he tangled up on his feet and fell backwards;" that "he looked like he fainted" and "was bleeding out of his ears;" and that "Dertz and I went over and we picked him up and put him in the grass on the curb."

On cross-examination Jeswiak stated that he testified at the coroner's inquest: "Then he grabbed me by the shirt. Then he pulled my underwear and shirt right off. * * * Then he said, 'I am a better man than you are.' He put up his dukes and started fighting. He walked away and got as far as the curb, by the asphalt. All of a sudden he got tangled up and fell backwards and stayed there. Frank and I picked him up and put him on the grass."

The trial judge refused the request of counsel for defendant to call Frank Dertz as a court witness, and, upon being called on a witness by defendant, he testified that Guza "said he was a better man than Stanley (Jeswiak), and he called him a dirty word, and then

they started tussling around * * *. They were swinging wildly, more like a woman's fight, like scratching each other. * * * John (Guza) got his coat first, and then while putting it on he made a misstep backwards and he fell backwards, with his head hitting the pavement." In answer to a question by defendant's counsel as to his testimony at the coroner's inquest, Dertz stated that he testified: "He grabbed him by the shirt, Stanley, and he ripped his shirt. As Stanley went over to him and he pulled his shirt and ripped his shirt. Then they started to fight. I tried to stop them from fighting, and John slipped - * * * backwards and he fell backward with his head hitting the pavement."

On cross-examination Dertz testified that Guza and Jesiak were separated by about ten feet when Guza slipped; and that Guza "had one sleeve in the coat and he was getting the other one while he was backing up, and some how or other with his heels he hooked up and fell backwards, * * * and hit the pavement."

Dr. Levinson, who performed an autopsy on the body of deceased, testified that he found a lump on the back of his head and that he died as a result of a skull fracture and hemorrhage of the brain.

Plaintiff contends that the court erred in permitting defendant's counsel, over his objection, to interrogate Dertz, his own witness, as to his testimony at the coroner's inquest. This defendant's counsel had a right to do. In Devine v. Johnston & Jennings Co., 189 Ill. App. 556, this court said at p. 560:

"The law is well settled that a party to a suit cannot impeach a witness voluntarily called by him, except as that result may be incidentally accomplished by proving a state of facts differing from that sworn to by the witness in question." Chicago City Ry. Co. v. Gregory, 221 Ill. 591. There was no pretense that the witness Novak had perpetrated a fraud upon the plaintiff by representing to him or his counsel that he would give evidence in his favor that he did not testify to at the trial. If the witness unexpectedly gave testimony at variance with that he gave before the coroner, the plaintiff had the right to call the attention of the witness to the statements he made at the inquest, for the purpose of quickening his memory and awakening his conscience."

they started talking around 7:30. They were wearing slacks,
more like a woman's dress, like something with slacks, a -
them (them) got him out first, and then while waiting it on the
back a white dress and he felt something, with his hand
holding the woman's. It seemed to be something of something,
around on to the hospital at the woman's request, they started
that he started. The woman got by the door, standing, and he
tipped his head. He always went over to her and he pulled his
hair and tipped his head. They stayed in there. I heard
he came from the hospital, and then stayed - a - somewhere and
he felt something with the hand holding the woman's.
The very-embarrassed feeling that came and feeling
were connected by them and then they slipped and then they
"had one more in the end and he was feeling the same and this
he was feeling up, and then he was with him and he was
up and fell backwards, a - a - and his head went down."
The woman, who continued an escape on the day of
the event, testified that he found a lump on the back of his head
and that he did as a result of a skull fracture and hemorrhage of
the brain.
The woman testified that she never heard of anything
about the woman's account, over his objection, in the woman's mind, his
own witness, as to his statement at the woman's request. This
testimony's account had a right to be, in *Wright v. Johnson*, 4
100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

It was not proper, however, to admit the testimony of Dertz before the coroner, either for the purpose of having the jury consider it as independent evidence or for the purpose of impeaching him. (Devine v. Johnston & Jennings Co., supra.) While plaintiff's counsel, in order to expedite the hearing, finally stipulated that the court reporter who took Dertz's testimony at the coroner's inquest would testify that the questions which were asked Dertz by defendant's counsel, which purported to include questions asked and answers given by him at the coroner's inquest, were questions asked and answers given by him at such inquest, it was over the strenuous objection of plaintiff's counsel that the court reporter was permitted to testify at all as to Dertz's evidence at the inquest. Defendant abstracted the court's reporter's testimony as to Joniak's evidence at the inquest, but we are at a loss to understand why the abstract is silent as to the same court reporter's testimony as to Dertz's evidence at the inquest. It was prejudicial error to admit the court reporter's evidence as to Dertz's testimony.

Defendant's counsel in his examination of the witness Dertz asked the question: "But Stanley was held for murder, wasn't he?" While plaintiff's objection to this question was sustained and the jury instructed to disregard it, nevertheless it had a tendency to prejudice and influence the jury. Preliminary to calling Dertz as a witness, counsel for defendant stated to the court in the presence of the jury "that he (Dertz) was a friend of the deceased and he was a friend of the man who killed him." While this statement was not objected to and would not in itself be cause for reversal, it undoubtedly had a tendency to influence the jury and should not be repeated in another trial of this case. The question and statement were calculated to leave the inference with the jury that Gule came to his death at the hands of Joniak and were highly prejudicial.

Not only were the errors in the trial of this cause here-

before indicated highly prejudicial to plaintiff, but the evidence was palpably insufficient to sustain the verdict and we are satisfied that in granting plaintiff's motion for a new trial the court did not abuse its discretion, but acted properly under the circumstances.

The order of the Municipal court of Evanston allowing the new trial is affirmed.

AFFIRMED.

Scanlan, P. J., and Friend, J., concur.

When the above was discussed with the Board of Directors, it was decided that the Board should not take any action at this time, but that the matter should be referred to the Board of Directors for their consideration at a later date.

10-11-1944

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

38531

MID-CITY TRUST AND SAVINGS
BANK, as trustee,
Appellant,

v.

RICHARD DUBIN et al.,
Defendants.

ALEX SCHATZMAN, intervening
petitioner,
Appellee.

INTERLOCUTORY

APPEAL FROM SUPERIOR
COURT, COCK COUNTY.

282 I.A. 625

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

This interlocutory appeal is brought to reverse an order of August 13, 1935, appointing a receiver in response to the prayer of the intervening petition of an individual bondholder, filed in a foreclosure proceeding commenced by the Mid-City Trust and Savings Bank (hereinafter referred to as the bank), as trustee. The intervenor has filed no brief in this court.

The bank was trustee under a trust deed which conveyed the premises located at the southwest corner of 54th street and Turner avenue, Chicago, as security for an indebtedness of \$43,000, evidenced by forty-three bonds of \$1,000 each, executed and delivered by the mortgagors January 3, 1929. The mortgagors defaulted in the payment of the balance of the principal due January 3, 1931, and of the principal and interest due January 3, 1932, and July 3, 1933. The trustee thereupon elected, under the terms of the trust deed, to declare the entire amount of the indebtedness evidenced by the unpaid and outstanding bonds immediately due and payable, and as the representative of all the bondholders on July 29, 1932, filed a bill to foreclose the trust deed. The trustee bank on the same date took

possession of the property, as authorized by the trust deed, remaining in possession of and managing same and collecting the rents, issues and profits therefrom until August 18, 1936.

On the latter date Alex Schatzman filed his verified intervening petition asking for the appointment of a receiver for the premises. The material allegations of his petition are that July 29, 1932, the trustee filed its bill to foreclose the trust deed in question securing the principal indebtedness of \$45,000, evidenced by forty-three bonds of varying amounts and maturities; that, on the same date that it filed its bill to foreclose, the bank, as trustee, took possession of the premises it sought to foreclose and has continuously since that date operated and managed said property and collected the rents, issues and profits therefrom; that no action has been taken to bring the foreclosure proceedings to decree; that he is the owner and holder of four \$1,000 bonds; that he filed his petition on his own behalf and as a representative of each and every holder and owner of the bonds and interest coupons secured by the trust deed; that the bank is the owner of \$10,000 in bonds secured by the lien of the trust deed, to foreclose which the bill was filed in this cause; that from the rents, issues and profits collected by the trustee from these premises it has declared a dividend of 25, but has discriminated between depositing and nondepositing bondholders in the payment thereof; that petitioner has demanded an accounting of the trustee, which has been refused; that the interests of the trustee, although ostensibly the same as the interests of the bondholders, are in conflict therewith; that it would be for the best interests of the bondholders that a receiver be appointed; that the premises are improved with a three-story brick building containing twelve apartments; and that the fair market value of such premises does not exceed \$28,500, and that the property is a good security for the indebtedness.

possession of the property, as authorized by the first deed, no
claim is necessary of an assignment was not making the
whole, interest and profits remaining with the first

On the last day of the month of May 1881, the first
assignment of the property was made to the assignee, and the
assignment was made to the assignee, and the assignee was
made in possession of the property, and the assignee was
made in possession of the property, and the assignee was
made in possession of the property, and the assignee was
made in possession of the property, and the assignee was

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and
and, on the same day that it was made, it was made, and

The petitioner concludes with a prayer for the appointment of a receiver.

After reciting that the chancellor had read the intervening petition and had heard arguments in support thereof, the order of the court entered on the same day the petition was filed found that it had jurisdiction of the parties and the subject matter, that the gross rental was approximately \$4,000 a year, that the premises were want security for the indebtedness of \$45,000 which was evidenced by forty-three outstanding bonds, that the premises and improvements thereon were not worth more than \$25,000, that the rents were pledged as security for the indebtedness represented by the principal bonds and interest coupons due thereon and secured by the trust deed sought to be foreclosed, and that the intervening petitioner was entitled to the appointment of a receiver. The order decreed the appointment of a receiver and named one Edward Fuder as such.

The record in this case furnishes no justification for the entry of this order. There is no finding in the order that the trustee was incompetent or mismanaged the mortgaged property or that it had been guilty of fraud, misconduct or want of capacity in its management thereof. It took from the trustee the possession and control of the property to which it was legally entitled, thereby placing a stigma upon the name of the trustee without having heard any evidence in support of the allegations of the intervening petition and without permitting the trustee to answer the petition or to offer evidence in defense of the charges made therein. Counsel for the trustee was not even permitted to present his argument to the court in defense of the trustee's operation and management of the property in the interest of all the bondholders. The order itself recites that, notice having been served upon all the parties to the record and the court having read the intervening petition, it merely heard the argument of counsel

The President considered with a view to the appointment of a
President.

It was noted that the President had read the inter-

vening petition and had heard arguments in support thereof, the

order of the court was made on the same day the petition was filed

and that it was published in the morning and was subject matter,

that the Green Book was approximately \$4,000,000, that the

provisions were made pursuant to the instructions of \$11,000 which

was evidenced by forty-three endorsement bonds, that the provisions and

instructions themselves were not worth more than \$10,000, that the price

was higher as usually for the instructions represented by the

national bank and national treasury the issue was covered by the

fact that there is no difference, and that the instructions published

was entitled to the appointment of a receiver. The order directed the

appointment of a receiver and named one as receiver under the order.

The record in this case further has jurisdiction for the

entry of this order. There is no finding in the order that the receiver

was appointed or designated the receiver's power is as that it has

been entry of order, directed at least as regards to its management

thereof. It took from the statutes the provisions and control of the

property in which it was legally entitled, thereby creating a system

upon the name of the trustee without having been any evidence in

support of the allegations of the intervening petition and without any

finding the power to remove the receiver or to alter evidence in

violation of the rights and interests. Counsel for the receiver was not

even permitted to present his argument to the court in support of the

receiver's operation and management of the property in the interest of

the beneficiaries. The court itself ruled that, unless having

any interest upon all the parties to the cause and the court having

and the intervening petition, it merely heard the arguments of counsel

in support thereof. As heretofore stated the order contains no finding as to the trustee's incompetency or any other valid cause for its dispossession based on the allegations of the petition or otherwise, sufficient to sustain it and without such finding it must be reversed. (Jackson v. Backett, 146 Ill. 646; Village of Harlem v. Suburban R. R. Co., 202 id. 301.)

Courts in any case should be slow to interfere with trustees in the apparently lawful discharge of their duties at the instance of an individual bondholder, and least of all should do so without a full and fair hearing when it appears that such bondholder is not himself seeking actual relief, but is attempting to obstruct the trustee in the discharge of what it deems to be its duty. (American Trust & Safe Deposit Co. v. 160 East Del. Bldg. Corp., 262 Ill. App. 67; Bowling Green Trust Co. v. Virginia Pass. & Power Co., 132 Fed. 921.) The trustee was rightfully in possession of this property in the interest of all the bondholders and was properly performing its duties for aught that appears in the record. Application for the appointment of a receiver is addressed to the sound legal discretion of the court. It is a high and extraordinary remedy. The power is not arbitrary and should be exercised with caution and only where the court is satisfied there is imminent danger of loss if it is not exercised. The general rule is that the applicant must show, first, that he has a clear right to the property itself or has some lien upon it, or that the property constitutes a special fund to which he has a right to resort for the satisfaction of his claim; and second, that the possession of the property by the trustee was obtained by fraud, or that the property itself or the income arising from it, is in danger of loss from neglect, waste or misconduct. (Bagdonas v. Liberty Land and Investment Co., 309 Ill. 103; Baker v. Backus, 32 id. 79; Turnbull v. Prentiss Lumber Co.,

On 11/11/1964, the following information was received from the Bureau of the Census, Washington, D.C.:

of the individual members, and issues of all kinds to

to observe the service in the field of work it seems to be the

doi:10.1371/journal.pone.0142012.g002

Copyright © 2000 by John Wiley & Sons, Inc.

ADJUTANT GENERAL'S OFFICE, WASHINGTON, D. C. 20315 (4-254-1001)

and the government will file to support all of your rights to

100-443887-100

all of the people of the world to be made to be the same

www.elsevier.com/locate/jbiotec

...The power is not arbitrary and should be exercised - 123

100-443887-100

of issue it is not answered. The general rule is that the party

100-443887-100

16-00000

Special care is taken to insure that the material

and of growing and in preparing all this, women are unable also to

There is no doubt that the above is a true statement.

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 395–402

doi:10.1017/S0022292412001611

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

55 Mich. 387; Conro v. Gray, 4 How. Pr. 166; Schlesht's Appeal, 60 Pa. 172; Fedmore v. Gunning, 9 Eng. Ch. 465; 34 Cyc. 19.)

Upon default the trustee was entitled to possession of the premises, and while it is recognized that a court of equity has power to appoint a receiver as an officer of the court and thereby deprive the trustee of such possession, such power is in derogation of the trustee's right to possession and of the right of all the bondholders to be represented by the trustee and it is a discretion to be exercised for the benefit of other interested parties only when the necessity appears. (Eagden v. Liberty Land and Investment Co., supra.) No such necessity appeared or was shown in this case.

We are constrained to hold that the action of the chancellor in the appointing of a receiver to take from the trustee possession of the property herein involved constituted an abuse of power. The interlocutory order of the Superior court of August 13, 1935, is reversed.

REVERSED.

Scanlan, P. J., and Friend, J., concur.

THE UNITED STATES OF AMERICA
DO hereby certify that the following is a true and correct copy of the original as the same appears on file in the Department of the Interior.

That the said copy is a true and correct copy of the original as the same appears on file in the Department of the Interior.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Department of the Interior at Washington, D.C., this 1st day of January, 1900.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

It is hereby ordered that the said copy be placed on file in the Department of the Interior.

JOHN D. BROWN, Secretary of the Interior.

38532

GEORGE HOLSMAN,

(Plaintiff) Appellee,

v.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY and REBEKA HOLSMAN,
as Executors of the Last Will and
Testament of HYMAN HOLSMAN, Deceased,

(Defendants) Appellants.

INTERLOCUTORY APPEAL

FROM SUPERIOR COURT

OF COOK COUNTY.

282 I.A. 625²

Opinion filed alone November 8, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an interlocutory appeal from an order of the Superior Court of Cook County, enjoining the defendants, executors under the last will and testament of Hyman Holzman, and all persons claiming through or under them or under their direction or control, from selling 720 shares of common stock of the Holzman Company, a part of the estate of Hyman Holzman, deceased, which had been ordered sold by the Probate Court of Cook County, and from taking any proceedings in the Probate Court of Cook County under and by virtue of a purported will of Hyman Holzman, deceased, until the further order of the court. It was further ordered that the injunction issue without bond. After the order was entered, the defendants moved for its vacation and dissolution upon the following grounds: That there is no equity on the face of said bill; that the bill is multifarious; that a court of equity will only interfere with the administration of an estate in the Probate Court in extraordinary cases, and that there is no good cause shown in the bill to authorize or empower the court to order the injunction to issue without bond. The motion to dissolve the injunction was denied.

On August 8th, 1935, the bill of complaint in question was filed in the Superior Court of Cook County by plaintiff, in and by which he seeks to set aside the will of Hyman Holzman, deceased, and

THE COURT

(Petitioner) vs. (Respondent)

1.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

(Respondent) vs. (Petitioner)

Opinion filed alone November 8, 1935

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

THE COURT is of the opinion that the Respondent is entitled to the relief sought by him.

the probate thereof, and for an injunction. The bill recites inter alia that Hyman Holzman died August 27th, 1934, and that prior thereto for an uninterrupted period of 35 years he had been a resident, and had his domicile in Chicago; that he left surviving him as his only and sole lawful heir at law the plaintiff in the bill; that at the time of his death he owned \$250,000.00 worth of real and personal property in Cook County and Florida; that Hyman Holzman left a last will and testament, which had previously been admitted to probate in the Probate Court of Cook County, and that in such will, after making some small bequests to charity, he left to his wife, Mellye Holzman, certain personal property, and to the Hibernian Banking Association, as trustee, \$10,000.00 to invest in good interest bearing securities, the income of which is to be paid to George Holzman, plaintiff, during his life, and that upon George Holzman's death, such amount should become a part of decedent's residuary estate; that by this will, Hyman Holzman left the remainder of his estate to the Hibernian Banking Association, as trustee, with the direction that it should be invested in good interest bearing securities, and that the trustees should give half of the net income to the decedent's wife in quarterly or semi-annual installments, and the other half of the net income of the said trust estate, and upon the death of his wife, all of the net income therefrom to his children, Hortense H. Holzman, Jeanne Holzman, and such as may thereafter be born, in equal shares. It is alleged that the will gives to the trustees in the administration of the trust provided for, authority to convert real into personal estate and personal into real estate, and to invest the estate in interest bearing securities, to sell, convey, mortgage, lease, rent, improve the estate, and perform every act he could perform if living; that persons dealing with the trustees need not look to any application of purchase money, and

that the trustees should not be held liable for errors in judgment, and that the will appoints Mellye Holman, his wife, and the Hibernian Banking Association, executors without bond. It is also alleged that the will was executed on December 8th, 1917, admitted to the Probate Court of Cook County on October 18th, 1924, and that letters testamentary had been issued to the Continental Illinois National Bank & Trust Company, successors to the Hibernian Banking Association, and Mellye Holman as executors, and that they are now acting as such executors.

The bill further alleged that about May 17th, 1893, decedent was lawfully married to one Fanny Friedman at Chicago, and that as a result of such marriage, two children were born, the plaintiff and a daughter who died in infancy; that in July, 1898, the decedent caused his wife Fanny to be committed to an insane asylum under proceedings commenced by the testator in the County Court of Cook County, and that Fannie Holman remained in that hospital until May 18th, 1903, when she was transferred to the Cook County Institution for the Insane at Danning, where she remained until her death on August 31st, 1911; that in 1908 the decedent filed a bill for divorce against his wife, Fannie Holman, in Seattle, in the County of King, State of Washington, in which it was alleged that Fannie Holman for more than ten years prior to the filing of the bill, was suffering from an incurable chronic mania and dementia, and for many years past had been and was at the time of the filing of the bill for divorce confined to the Illinois State Hospital for Insane at Danning; that on September 18th, 1908, Hyman Holman made an affidavit for the purpose of notifying Fannie Holman of the pendency of the suit for divorce, and that a copy of the publication of such notice was mailed to her at such insane asylum; that ~~XXXXXXXXXXXXXXXXXXXX~~, an order of default was entered against Fannie Holman on account of

her failure to appear and defend her action for divorce. The bill here further alleges that at no time during the divorce proceedings was any guardian ad litem appointed on behalf of Fannie Holman; that on September 19th, 1909, Holman was granted a divorce in said proceedings, and that the records of said divorce proceedings are incorporated in the bill of complaint in habeas verba. It is also alleged that at the time of procuring the divorce, Hyman Holman represented to the Washington court that he was a homo fide resident of the State of Washington, and was domiciled there, which statement was untrue, and that the Washington decree of divorce is null and void and of no effect. The bill of complaint further alleges that thereafter on September 17th, 1909, the decedent entered into a pretended marriage with one Hellye Brenner at Kenosha, Wisconsin, and that as a result of such marriage, there were born three daughters, Hortense, Jeanne and Constance Betty. The prayer of the bill is that the purported will of Hyman Holman, and the probate thereof, be set aside and be declared null and void, and that the same be declared not to be the last will and testament of Hyman Holman, deceased. The bill also prays that all the proceedings under the probate of the will be declared null and void, that the plaintiff in the bill in the instant cause be declared to be the lawful heir of Hyman Holman, that a writ of injunction issue against the Continental Illinois National Bank & Trust Company and Hellye Holman, as executors of the purported will of Hyman Holman, and that all persons acting under them be restrained from selling the 730 shares of common stock of the Holman Company, which had been previously ordered sold by the Probate Court of Cook County, until the further order of the court.

The motion to dissolve operated as a general demurrer to the bill. In Williams v. Chicago Exhibition Co., 180 Ill. 19, the

has failed to appear and failed to appear for divorce. The

will have further effect as to the time during the divorce pro-

ceedings and any provision of law relating to the same.

Notwithstanding the provisions of the law, the court may, in its discretion,

in said proceedings, and that the court may, in its discretion,

and may, in its discretion, in the bill of complaint in said matter. It is also

provided that at the time of presenting the divorce, the court

may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

and may, in its discretion, and may, in its discretion, and may, in its discretion,

Supreme Court held that "If, * * * there was any irregularity in the original issuance of the injunction, such as failure to give notice, such irregularity was waived by the motion to dissolve upon the face of the bill, inasmuch as such motion operated as a demurrer to the bill."

If, in view of the fact, as stated, the motion to dissolve operated as a general demurrer to the bill, then, in the present state of the record, and on this appeal, the matters and things set forth in the bill, including the allegations that the divorce of the decedent Holman obtained under the laws of the State of Washington, and his subsequent remarriage are void, and that the shares of stock belonging to the estate had been ordered and are about to be sold, must at this stage of the proceeding, be taken as true.

Upon the question as to whether or not the court was in error in ordering the injunction to issue without bond "for good cause shown in said complaint, "as recited in the order, we refer to the case of Kellogg v. State, 144 Ill. 14, where the Supreme Court said:

"The statute does not provide that injunction bonds shall be required in all cases, as section 9 authorizes the judge * * * granting an injunction, to order its issue without bond, in cases when, for good cause shown, he is of the opinion that the injunction ought to be granted without bond. In only one class of cases, viz., where an injunction issues to enjoin a judgment, is the amount of the penalty of the injunction bond fixed by the statute." See also Central Trust Co. v. McDermott, 357 Ill. App. 45.

The question as to whether a bond should have been required before an injunction issued or not "upon the showing made in the bill" being largely in the discretion of the trial court, and this being merely an appeal from an interlocutory order, we are not prepared to hold that the court was in error in entering such an order. As stated, this is an interlocutory appeal. In McDonough Co. v. Woods, 347 Ill.

App. 170, after reviewing the cases upon the question as to what issues are before this court on an interlocutory appeal, the court said:

"The statute permitting appeals from interlocutory orders was not intended primarily to provide for a review by this court of the rulings of the trial court on demurrers or to secure from this court its judgment on demurrers before the trial court has ruled thereon. A bill, when first filed, is frequently demurrable, especially bills for injunctions which are usually hurriedly prepared, but which may be made good by proper amendments which the first court has power to allow. We have no such power. The primary purpose of the statute is to permit a review of the exercise of the discretion lodged in the chancellor with the purpose of determining whether the interlocutory order probably was necessary to maintain the status quo and preserve the equitable rights of the parties.

We do not feel called upon to pass upon the demurrability of the bill or the merits of the cause. It is enough to say at present that the bill presents circumstances which lead to a belief that probably the plaintiff will be entitled to relief." See also Friedmann v. Peckler, 305 Ill. App. 199, and Lynch v. Massachusetts Mutual Life Ins. Co., 273 Ill. App. 366.

Upon the showing made here, we cannot say that the court was in error in issuing the injunction order, and in not requiring plaintiff to file a bond. The order appealed from is therefore, affirmed.

AFFIRMED.

HEBEL AND DENNIS E. SULLIVAN, JJ. CONCUR.

38079

WILLARD BESS, a Minor, by ERNEST R.
BESS, his Father and Next Friend,
Appellee,

vs.

CURTIS PUBLISHING COMPANY, a
Corporation, et al.,
Appellant.

Consolidated
Gen. Nos.
563366
563359

CHARLES T. MARTIN, as Administrator
of the Estate of ROY D. MARTIN, Deceased,
Appellee,

vs.

CURTIS PUBLISHING COMPANY, a
Corporation, et al.,
Appellant.

APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 625³

MR. PRESIDING JUSTICE McSURELY
DELIVERED THE OPINION OF THE COURT.

Defendant Curtis Publishing Company appeals from two judgments, each for \$3500, entered on verdicts of a jury.

Two separate suits were brought, both growing out of a collision between an automobile operated by the defendant and a truck. Two boys, both minors, Roy D. Martin and Willard Bess, were riding on the automobile as invitees or guests; Martin received injuries from which he died and Bess was injured. One suit was brought by the administrator of the estate of Martin for wrongfully causing his death; the other suit was brought by Willard Bess, a minor, by his father and next friend, to recover ^{for} personal injuries; by agreement of the parties the two cases were consolidated and tried together on the same evidence; the pleadings are substantially the same.

Each declaration, in three counts, charged that defendant's automobile was operated in a wilful and wanton manner, thereby causing it to collide with the truck. The burden of defendant's argument on this appeal is that the jury could not reasonably find the driver of the automobile guilty of wilful and wanton misconduct.

The accident occurred July 6, 1932, at one o'clock in the afternoon on a clear day at the intersection of Walnut street and Second street in the town of Fairbury, Illinois. Walnut street runs west, intersected at right angles by Second street, a north and south thoroughfare. Defendant's automobile was traveling east on Walnut street and the truck with which it collided was traveling south on Second street.

The two boys, Martin and Bess, were riding on the right hand running board of defendant's automobile; the chauffeur had asked them to go along with him to sell magazines; they had started to get into the automobile but he told them to ride on the running board outside.

A disinterested witness, sitting on his front porch about 75 feet east of Second street, on the south side of Walnut street, testified that there was no obstruction to view at the northeast corner of the intersection; that there was a junk pile on the corner lot and a wire fence about it, and that the view across the corner for the drivers of the respective vehicles was unobstructed; that when the southbound truck was 20 or 25 feet north of the intersection line, defendant's westbound car was 75 feet east of Second street. Willard Bess, 13 years of age, testified that when the truck came into view at a point which was about 40 to 50 feet north of Walnut street, defendant's automobile on which he was riding was then about one-half block east of Second street on Walnut.

There was evidence that the truck entered the street intersection going about 15 to 18 miles an hour. The driver of the automobile testified that he was going west on Walnut about 15 to 18 miles per hour, but there was other evidence that he was going 30 to 40 miles an hour. As defendant's automobile approached the intersection it did not slow up but apparently increased the speed and attempted to swing around in front of the truck. The driver of

The following is a summary of the information received from the Bureau of the Census, Department of Commerce, regarding the activities of the Communist Party, U.S.A., in the United States, during the year 1954.

[illegible]

A photograph of the subject, showing him with a mustache and wearing a suit, is attached to the top of the page. The photograph is a black and white portrait, showing the subject from the chest up. He is looking directly at the camera with a neutral expression. The background of the photograph is a plain, light color.

There was evidence that the truck carried the stolen tires. Another person stated it is his usual practice to use the same tires on all his cars. He was asked what he knew about the tires on the car that was stolen. He stated that he did not know of any other tires on the car. He stated that he did not know of any other tires on the car. He stated that he did not know of any other tires on the car.

the truck slammed on his brakes and just about stopped when his truck ran into defendant's automobile, striking it on its right side where the boys were. Defendant's driver admitted he did not look to the right or to the north until just as he was coming into the street intersection. The witnesses seem to agree that the driver of the automobile increased his speed and swerved to the left, but too late to pass in front of the truck. When the impact came the front of the truck was past the center of Walnut street and stopped within six or seven feet.

Under these circumstances, as the truck was nearer the street intersection than was the automobile, the truck was entitled to the right of way. Par. 343, chap. 121, Ill. State Bar. Stats. 1935. Defendant's driver, in failing to observe this, clearly violated the statute.

Both briefs devote a great deal of space to many cases which have attempted to define wilful and wanton misconduct. To discuss them would not be helpful. Among such cases are L. E. & W. R. Ry. Co. v. Bodemer, 130 Ill. 506; Chicago City Ry. Co. v. Jordan, 313 Ill. 306; Wallace Express Co. v. Egan, 391 Ill. 472; Bremer v. L. E. & W. R. R. Co., 313 Ill. 11; Reidenreich v. Bremer, 280 Ill. 439; Bernier v. Illinois Central R. R. Co., 296 Ill. 454; Brown v. Illinois Terminal Co., 319 Ill. 326; Jennery v. Q. & L. Traction Co., 306 Ill. 302; Trucking Co. v. Fairchild, 188 Ohio, 519. As was said in Bremer v. L. E. & W. R. R. Co., *supra*, "What degree of negligence the law considers equivalent to a wilful or wanton act is as hard to define as negligence itself, and in the nature of things is so dependent upon the particular circumstances of each case as not to be susceptible of general statement." The definition particularly applicable to the present circumstances is that wilful and wanton misconduct is that conduct which exhibits a conscious indifference to consequences. Bremer case, last cited.

Applying this to the facts before us, the jury could properly conclude that defendant's driver operated the automobile in a wilful and wanton manner, causing the accident. The driver knew he was approaching a street intersection in a town of 2500 population. He knew that the two boys were riding on the running board, where a collision with any other vehicle would probably injure them. He should have watched for traffic on Second street as he approached the intersection, and should have yielded the right of way to the southbound truck. Instead of that, approaching the intersection at 30 to 35 miles an hour, he increased his speed and took the chance of swerving past in front of the truck, regardless of the danger to the two boys on the running board. The jury could properly conclude that this conduct was conscious indifference to consequences.

Defendant argues that the case was not presented to the jury upon the theory of wilful and wanton conduct of the driver, but solely on the theory of ordinary negligence. It is said that the declaration did not properly charge wilful and wanton misconduct. We cannot agree with this statement. The declaration in all its counts charged wilful and wanton operation of the automobile. Moreover, even if there were some artificial defect in the declaration, which might have been deurrable, yet where issue is joined so that proof of the facts defectively or imperfectly stated was necessarily required, the verdict cures such imperfections. Miller v. Arena Co., 306 Ill. 104. No instruction was given on ordinary negligence, but the jury was instructed repeatedly that it was necessary for a verdict of guilty that the jury find defendant guilty of wanton and wilful misconduct.

Complaint is made of the instructions given at the request of plaintiff, but the brief does no more than refer to these by number. We have repeatedly held that instructions of

[illegible][illegible]

of reliability, but the total score is more than twice as

which complaint is made must be specifically set out in the brief, otherwise they will not be considered. Spencer v. Chicago A. E. W. Ry. Co., 349 Ill. App. 463; General Electric Supply Co., v. L'Honnemedieu & Sons Co., 223 Ill. App. 201. Plaintiff in his brief has set forth the instructions given at his request. We find nothing therein which was improper.

Examination of the instructions given at defendant's request fully covered the issue and emphasized the fact that the question for determination was whether or not defendant was guilty of wilful and wanton misconduct in the operation of the automobile, causing the accident, and if it was not the verdict should be not guilty.

Defendant earnestly complains of the refusal of the trial court to submit to the jury at its request a special interrogatory which reads as follows:

"Was the defendant Curtis Publishing Company, a Corporation, guilty of wilful and wanton conduct in the operation of the automobile at the time and place in question?"

Plaintiff's counsel objected to the submission of this to the jury, and the objection was sustained and the special interrogatory refused. Undoubtedly, as a general rule special interrogatories requiring the finding of an ultimate fact should be submitted to the jury on request of either party. Section 63, Civil Practice Act. It will be noted, however, that the interrogatory submitted in this case was merely a repetition of the sole issue submitted to the jury. No question of contributory negligence was involved and the only question for the jury to answer was whether or not defendant was guilty of wilful and wanton misconduct in the operation of its automobile. The special interrogatory was merely a duplicate of the ultimate question submitted to the jury. Under the circumstances we are unwilling to hold that the refusal to submit the special inter-

regatory was reversible error. At most it was a technical error, harmless and not prejudicial. Where substantial justice has been done and it is obvious that no different decision would result from another trial, the judgment should not be reversed because of errors in procedure. City of Chicago v. Jackson, 196 Ill. 496.

Finding no reversible error in the proceedings before us, the judgment in each case is affirmed.

AFFIRMED.

Matchett and O'Connor, JJ., concur.

38116

LOUISE TENWILLIGER,
Appellant,

vs.

UNITED AMERICAN TRUST AND SAVINGS
BANK, a Corporation, et al.,
Appellees.

28
CITIZEN'S COURT
OF COOK COUNTY.

282 I.A. 625⁴

MR. PRESIDING JUSTICE ACCORDINGLY
DELIVERED THE OPINION OF THE COURT.

Complainant by her bill seeks to recover securities of the face value of \$80,000, and for an accounting. A preliminary injunction was granted restraining the United American Trust and Savings Bank from disposing of the securities and requiring it to hold the same, together with all principal and interest payments collected thereon, apart from its assets pending the further order of the court. The cause was referred to a master in chancery.

Pending the taking of evidence a receiver was appointed for the United American Trust and Savings Bank. William L. O'Connell is the present receiver. The master took evidence and returned his report thereon, recommending that the bill be dismissed for want of equity; objections were filed and overruled and they stood as exceptions; the chancellor overruled the exceptions, approved the master's report, decreed that the temporary injunction be dissolved and that the bill of complaint as amended be dismissed for want of equity, without prejudice to complainant's right to assert an accounting not now in issue.

The gist of complainant's bill is that these securities were obtained from her by Fred W. George, a trusted friend, through misrepresentations and concealment, and were delivered by him to the United American Trust and Savings Bank.

Complainant was not wholly inexperienced in business matters. In 1892 she and her husband ran a business including insurance and real estate loans; she assisted in this business until 1900.

handling it alone when her husband was out of the office or away because of illness; in 1917 she became executrix of her husband's estate, amounting to \$90,000; the same year she became one of the executors and trustees of her mother-in-law's estate, amounting to \$100,000; later she became one of the executors and trustees of the estate of her father-in-law, which amounted to approximately \$200,000; she made suggestions that the partnership under which she had done business should be incorporated to avoid partnership liability. In 1911 the Home Bank and Trust Company was organized near the same location where the Terwilligers had carried on their business. Mr. Terwilliger was the first president, and a director until his death in 1917. Complainant received from her husband's estate a third interest in Terwilliger & Company, 528 shares of stock in this Home Bank and various parcels of real estate in Chicago. She also purchased stock in the Home Bank on her own initiative. In her bill she states she has had years of experience in the purchase of mortgages, informing herself as to the moral and financial responsibility of the obligors and the values of the properties involved.

The association of Ralph Terwilliger and the complainant with George had been close; for a time in his youth he lived in complainant's home and was regarded as a member of the family; in 1904 Mr. Terwilliger took him into partnership; after the death of Mr. Terwilliger, George became complainant's trusted adviser, assisting her in the administration of her husband's estate. Shortly after Mr. Terwilliger's death George suggested to complainant that it would be advisable for him to be appointed a director of the Home Bank because of the amount of Home Bank stock held by complainant and her family. As a result of this suggestion he was elected to the board and in 1919 became vice-president. George carried a key to complainant's safe deposit box, which contained negotiable securities; he selected and recommended mortgage investments and

looked after these matters during complainant's absence from Chicago. All matters were submitted to complainant for decision; sometimes she followed his recommendation and sometimes not; she made the final decision in every case; George never signed any papers for her.

The master found that complainant had an independent mind and judgment as to matters of business arising between her and George; that while she consulted with him she made her own decisions and she was not at any time dominated or unduly influenced by him.

In the latter part of 1929 and the first half of 1930 the affairs of the Home Bank and Trust Company became uncertain on account of an excess of real estate mortgages, and on April 17, 1930, the state auditor wrote the directors of the bank calling attention to the fact that they were overburdened with real estate loans.

July 3, 1930, the auditor made another examination of the bank and by letter of July 8th told the directors that there was a substantial impairment of the capital stock of the bank, and "You are requested to take immediate steps to levy a 100% assessment on the capital stock of your bank, in order to write off the Worthless, Doubtful and unacceptable slow assets and to provide sufficient cash to properly operate your bank." During the first half of 1930 the directors of the Home Bank and Trust Company had been endeavoring to effect a merger with other bank interests in Chicago; negotiations were had to this end with the National Bank of the Republic and its affiliate, National Bancorporation; a definite proposition to take over the Home Bank was submitted to its directors on July 8th, and on the next day, until an early hour in the morning of July 11th, the directors and officers of the Home Bank and Trust Company were engaged with the representatives of the National Bank of the Republic in working out the details of the plan for the relief of the Home Bank and Trust Company.

[illegible]

George had numerous conversations with the complainant regarding the seriousness of the situation. In the latter part of 1929 George had discussed with her a proposed merger, which was not accomplished, with the Northwestern Trust & Savings Bank. Complainant left Chicago in January, 1930, for California, returning in April. Thereafter, George discussed the condition of the Home Bank several times in May, June and July, advising her that unless something strenuous were done, such as a take-over by another bank, the Home Bank might have to close; he told her that the real estate loans were too heavy and the bank examiners were giving much trouble; she expressed the hope that negotiations could be completed to keep the bank open. George discussed the state auditor's letter of July 8th, ordering the directors of the bank to levy a 100% stock assessment. As complainant then owned 1100 shares of the Home Bank stock this assessment would require of her the payment of \$110,000. George discussed this letter and the question of her stockholder's liability. He also told her of the negotiations with the National Bank of the Republic to take over the Home Bank.

Late in the evening of July 10th the proposition of the National Bank of the Republic to take over the Home Bank was submitted. It contemplated the formation of a bank called the United American Trust and Savings Bank, which on July 10th had obtained a permit to commence business. Complainant makes some suggestion that this new bank was organized and owned by the directors of the old bank, but while there may have been a formal ownership the stock was actually held and owned by the National Bank of the Republic. The officers and directors of the old bank did not remain long in the new bank. George was let out at the first annual meeting of the stockholders, held in January, 1931. The plan of reorganization was incorporated in an agreement whereby

the United American Bank agreed to purchase the assets and assume the liabilities of the Home Bank. It was further provided that certain directors of the old bank should deposit collateral aggregating \$500,000 as a guarantee of the new bank against loss in the assumption of the debts of the old bank. A. R. Woodruff, chairman of the board of directors of the National Bank of the Republic, stated that it would not take over the Home Bank unless this guarantee fund was raised.

The various directors of the Home Bank were then called upon for cash or bankable securities to make up this guarantee fund. Securities aggregating \$420,000 were pledged and an additional \$80,000 was needed. George, as a director, was called upon to contribute to the fund but stated that he had no government bonds or other securities of first class collateral. One of the directors of the Home Bank then suggested that the complainant, being a large stockholder, should put up something, to which George responded that he could not speak for her and that he would have to talk with her first to ascertain whether she would deposit any securities. Later the guarantee agreement was signed by the directors, including George, and the take-over agreement was also signed. The guarantee agreement is a collateral agreement for one year and the liability of the guarantors is limited to the collateral deposited.

George called upon complainant on the morning of July 11th. Beth complainant and her daughter, Mrs. Clarke, as well as George, testified as to what was said at this conference. The master was of the opinion that the differences between their versions were not sufficiently material to change the result. Complainant and Mrs. Clarke testified that George said that complainant's securities were to be put up for one year and at the end of the year they were to be returned to her; that the securities were to be put up

the United States was placed in business the business and business
the facilities of the new bank. It was further provided that
particular attention be given to the bank would be given to the
United States, but as a condition of the new bank would be in the
assumption of the bank of the new bank. A new business, business
of the bank of business of the business of the business,
stated that it would not take over the bank from the bank this
business from the bank.

The various elements of the same have been called upon for such an analysis as to what is the situation. The various elements of the same have been called upon for such an analysis as to what is the situation. The various elements of the same have been called upon for such an analysis as to what is the situation.

[illegible]

as a guarantee of the deposit liabilities of the Home Bank, which had sufficient assets to pay out, but that unless the guaranteed agreement was completed by noon of that day the Home Bank would be obliged to close, and called attention to complainant's stockholder's liability of \$110,000 if the bank closed.

George testified that he told complainant the directors of the Home Bank had sent him to solicit her help; that the bank was in a precarious condition; that the bank examiners were advising a reorganization; that the Home Bank had ^{been} taken over by a new bank that was being formed; he informed her of the guarantee fund of \$500,000 which had been pledged by the directors, that it was short \$80,000 and that the directors desired her to pledge that amount; that if the Home Bank should be closed she would incur a stockholder's liability; that the securities were to be pledged with the new bank to guarantee the deposit liabilities of the Home Bank and were to be put up for a year. He says he told her he "thought the securities would be returned to her within a year;" that it was his honest belief and opinion, and that of the other directors of the Home Bank, that enough assets could be liquidated during the year so that the guarantee fund would never be called upon. Complainant testified that she fully understood that if the other assets of the Home Bank were not sufficient the new bank would have the right to resort to her securities. Mrs. Clarke advised complainant that it would be better for her to put up \$80,000 in securities than to have a stock liability of \$110,000 if the bank closed, and complainant testified that the "prime reason" that she had for giving these securities to George was to save herself from a liability on her bank stock.

Thereupon George went with complainant to her safe deposit

as a guarantee of the honesty of the work done, which
had nothing to do with the work, but that when the
document was completed by him he had the same work done
by others to check, and called attention to the work done
by others to check.

The same thing was done in the case of the work done by others to check.

The same thing was done in the case of the work done by others to check.

was in a previous condition; but the work done by others to check
was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

was in a previous condition; but the work done by others to check

box in the Home Bank and complainant's securities were removed, complainant being present and making no objection; she took a receipt for these mortgage securities, signed by George and the Home Bank and Trust Company. The receipt recites that the mortgages are to be deposited "as a guarantee." A few days later complainant received a receipt from the National Bank of the Republic, as agent, stating that it had received her mortgages "under an agreement respecting liabilities of Home Bank and Trust Company." There was evidence that complainant fully understood the transaction. She testified that she "understood that if the assets of the bank were not sufficient to pay the depositors they would have a right to go to these securities." Within a month thereafter she expressed to her physician a fear that she might lose her securities, although she was hoping or expecting, probably, to get back the \$50,000 in a year.

Subsequently, on July 18th, she received an announcement of the new bank, United American Trust and Savings Bank, and July 26, 1930, she received a letter from the new bank stating "We are holding, under guarantee, certain securities," and inquiring what disposition should be made of the interest coupons, to which she replied by letter, saying, "This is to notify you that you send all interest notes coming due on mortgages deposited with you under my guarantee to R. I. Terwilliger & Company." Several times in August, September and October she called at the United American Bank to obtain the interest coupons on her pledged mortgages. In February, 1931, she sent a letter to the bank authorizing the investment of funds, and stating -

"These securities when purchased are to be held by you together with my other securities which will then have a total face value of \$50,000 which securities were pledged to the United American Trust & Savings Bank as collateral security to the guaranty executed by Fred T. George and others, dated July 10, 1930."

In the same month complainant attended a meeting of the

to be accepted as a hypothesis. A few have been mentioned
Hark and Hunt (1964). The results indicate that the hypothesis
color for these materials resulted, which by design and the fact
immediately being present and using no objectives; and that a re-
port is the fact that the hypothesis is considered very unusual.

RECEIVED: 1962 JAN 10 10 10 AM
 DEPT. OF THE ARMY
 WASHINGTON, D. C. 20315

who was being at something. Finally, he had seen the film in
his physical a few days after the film had been shown, although
to these conditions. Within a month he had been shown in
and willing to pay the attention they would have a right to be
believed that the "unfamiliar" was in the hands of the film were
witness that nothing was left behind the film.

[illegible]

THESE DOCUMENTS ARE THE PROPERTY OF THE NATIONAL ARCHIVES AND ARE LOANED TO YOU BY THE NATIONAL ARCHIVES. THEY ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE NATIONAL ARCHIVES. THESE DOCUMENTS ARE NOT TO BE USED FOR ANY PURPOSE OTHER THAN THAT FOR WHICH THEY WERE LOANED TO YOU. ANY VIOLATION OF THESE TERMS WILL BE CONSIDERED A VIOLATION OF THE NATIONAL ARCHIVES' POLICY AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

La 1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-2593-2594-2595-2596-2597-2598-2599-2600-2601-2602-2603-2604-2605-2606-2607-2608-2609-2610-2611-2612-2613-2614-2615-2616-2617-2618-2619-2620-2621-2622-2623-2624-2625-2626-2627-2628-2629-2630-2631-2632-2633-2634-2635-2636-2637-2638-2639-2640-2641-2642-2643-2644-2645-2646-2647-2648-2649-2650-2651-2652-2653-2654-2655-2656-2657-2658-2659-2660-2661-2662-2663-2664-2665-2666-2667-2668-2669-2670-2671-2672-2673-2674-2675-2676-2677-2678-2679-2680-2681-2682-2683-2684-2685-2686-2687-2688-2689-2690-2691-2692-2693-2694-2695-2696-2697-2698-2699-2700-2701-2702-2703-2704-2705-2706-2707-2708-2709-2710-2711-2712-2713-2714-2715-2716-2717-2718-2719-2720-2721-2722-2723-2724-2725-2726-2727-2728-2729-2730-2731-2732-2733-2734-2735-2736-2737-2738-2739-2740-2741-2742-2743-2744-2745-2746-2747-2748-2749-2750-2751-2752-2753-2754-2755-2756-2757-2758-2759-2760-2761-2762-2763-2764-2765-2766-2767-2768-2769-2770-2771-2772-2773-2774-2775-2776-2777-2778-2779-2780-2781-2782-2783-2784-2785-2786-2787-2788-2789-2790-2791-2792-2793-2794-2795-2796-2797-2798-2799-2800-2801-2802-2803-2804-2805-2806-2807-2808-2809-2810-2811-28

guaranters at the office of a lawyer, at which she and her daughter Louise Clarke and her husband Fred Clarke, an attorney, were also present. It was stated that perhaps the assets would be insufficient to pay the liabilities and there would probably be a loss to the guaranters. Some of the guaranters present disagreed with this, saying that in their opinion there would be no loss to the guaranters. She subsequently attended another meeting of the guaranters. In March, 1931, she wrote again to the United American Trust and Savings Bank authorizing the investment of certain cash and again referred to her securities of the face value of \$50,000 "pledged to the United American Trust & Savings Bank as the collateral security to the guarantee executed by Fred H. George and others, dated July 10, 1930." June 13, 1931, the United American Trust and Savings Bank notified complainant and the other guaranters that it was enforcing the guarantee agreement, and on June 14, 1931, complainant for the first time asserted that the pledge of her securities was unauthorized.

We hold that complainant was not misled or deceived by George when he procured her securities in connection with the guarantee fund. Complainant testified that she clearly understood she was turning over the securities to save herself a liability on the bank stock; she understood the situation and delivered the securities to George that he might pledge them to secure the deposit liabilities of the Home Bank. It is suggested that she was in poor health at the time. Her physician testified that in December, 1929, she was about sixty four years of age, that she had treated her for an infection of the finger; that she seemed to be in good health, although in August, 1930, she was much disturbed because of her financial condition, saying she had put up \$30,000 and was "wondering how the thing was coming out" - said she could hardly sleep.

The record justifies the finding of the master that

the guarantee agreement was substantially in accordance with complainant's understanding and that she expressly authorized the pledge of her securities for this purpose.

Counsel for complainant argue earnestly that George abused the fiduciary relationship between him and complainant by failing to inform her of certain facts. The brief particularizes many things which it is said George did not divulge. To comment on all of these would greatly lengthen this opinion. A typical fact is that George expected to become an officer and director of the new bank, but complainant said she knew this; that George was indebted to the Home Bank for a considerable amount, but this fact was immaterial as his obligation was not cancelled when the new bank took over the old bank; that George was the owner of stock in a number of other banks; but it is not shown that there was any connection between these banks and the Home Bank or that they would be affected if the Home Bank closed; that George needed bankable securities amounting to \$80,000 to deposit under the guarantee agreement, but George was not obligated to make such a deposit; he told complainant when he requested her securities that he had signed the document. Other similar facts are particularized which it is argued George should have told complainant at the time of the transaction in question. As to all and any such matters where complainant was not informed or only partially informed by George, there was no causal connection between such lack of information and the action of delivering her securities to George for deposit.

There is considerable evidence tending to show that complainant ratified the transaction. She received three receipts which stated that her securities were deposited under an agreement respecting the liabilities of the Home Bank. In the letters, above referred to, she repeated her understanding that the mortgages were deposited as collateral security to the guarantee executed by George. The

The Committee's report was submitted in accordance with the
 Committee's instructions and that the Committee considered the
 report of the Committee for this purpose.

General The Committee's report was submitted in accordance with the
 the Committee's instructions and that the Committee considered the
 to inform her of certain facts. The Committee's report was
 things which it is said to be in the hands of the Committee. It is
 of these things which it is said to be in the hands of the Committee. It is
 that the Committee's report is in the hands of the Committee. It is
 that, but the Committee is in the hands of the Committee. It is
 in the hands of the Committee. It is a considerable amount, but the Committee is
 having on his obligation to the Committee. It is in the hands of the Committee.
 over the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 other things; but it is in the hands of the Committee. It is in the hands of the Committee.
 from these things and the Committee is in the hands of the Committee. It is in the hands of the Committee.
 if the Committee is in the hands of the Committee. It is in the hands of the Committee.
 according to the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 design was not submitted to the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 when the Committee is in the hands of the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 then the Committee is in the hands of the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 should have this Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 question. It is in the hands of the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 informed on this Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 Committee. It is in the hands of the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 being her Committee. It is in the hands of the Committee. It is in the hands of the Committee.

There is a Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 and the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 states that the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 that the Committee. It is in the hands of the Committee. It is in the hands of the Committee.
 as the Committee. It is in the hands of the Committee. It is in the hands of the Committee.

letter of February 3, 1931, from complainant to the United American Trust & Savings Bank was apparently drafted by the president of that bank and given to Mr. Clarke, complainant's son-in-law, to receive complainant's signature, as the bank wanted it as an authorization to invest funds. The draft of the letter referred to the deposit of her securities, and added the words "with my consent." Complainant refused to sign the letter containing these words and they were crossed out. Her son-in-law, Mr. Clarke, a lawyer, testified that complainant objected to the words "with my consent," saying she did not have time to consent to anything - that she was rushed into the matter. We do not think this incident is important. In this same letter she describes her securities as pledged to the United American Bank as collateral security to the guaranty. In August or September, 1930, she told Mr. Hall, president of the United American Bank, that if her securities were not returned at the end of the year, "I shall fight."

In many cases it has been decided that ratification may be inferred from circumstances, and that where an agent transcends his authority it is the duty of the principal to repudiate the act as soon as he is fully informed of what has been done by the agent, else he will be bound by the act as having ratified it by implication. Searing v. Butler, 60 Ill. 376; Connett v. City of Chicago, 114 Ill. 233; Campbell v. Miller, 34 Ill. App. 208; Wischer v. Palmer, 106 Ill. App. 432. Cases cited by the complainant are not to the contrary. Where it has been held there is no ratification it was shown there were no facts brought to the attention of the principal which would put him on inquiry.

To discuss all the points mentioned in the briefs would make this opinion far too lengthy. The case turns upon whether complainant knew all of the essential facts and well understood what she was doing when she delivered her securities to George.

The record convinces that complainant was informed of all the material facts prior to the pledge of her securities and that it was the result of her deliberate and conscious action. The master in chancery has examined the evidence with great care, and his conclusions are in accord with the facts and the law.

We hold that the record clearly supports the findings of the master and the decree of the court in this respect, and the decree is therefore affirmed.

AFFIRMED.

Matchett and O'Connor, JJ., concur.

The present position of the law is that all the
 material facts must be set out in the statement of the case.

It is the duty of the court to decide the case.

It is the duty of the court to decide the case.
 It is the duty of the court to decide the case.

It is the duty of the court to decide the case.
 It is the duty of the court to decide the case.
 It is the duty of the court to decide the case.

It is the duty of the court to decide the case.

It is the duty of the court to decide the case.

38144

H. H. BACHS and ELIE LEVY,
Copartners,

Appellees,

vs.

E. SOUMAR,
Appellant.

29
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

232 I.A. 6261

MR. PRESIDING JUSTICE MCHURLEY
DELIVERED THE OPINION OF THE COURT.

Defendant rented to plaintiffs four booths in the Czechoslovak Pavilion at the 1934 Century of Progress in Chicago; plaintiffs brought suit, claiming defendant had breached his contract by interfering with plaintiffs' sale of articles and by causing the booths to be closed on two days so that plaintiffs were unable to sell any merchandise on those days, with resulting damages to plaintiffs. The case was tried by the court without a jury, which found for plaintiffs and assessed their damages in the sum of \$2800; from the judgment on the finding defendant appeals.

Defendant asserts as a defense that the contracts of leasing were in writing and that plaintiffs violated their obligations thereunder to sell Czechoslovakian merchandise only; and moreover, that he did not cause the booths to be closed but that this was done by the officials of A Century of Progress because of the violation of the obligations undertaken by plaintiffs.

Defendant had charge of the Czechoslovak Pavilion, under contract with the Czechoslovak Chamber of Commerce, in the 1934 Century of Progress fair in Chicago; he applied to the Century of Progress for a permit for a concession; the application provided that the Czechoslovak Pavilion should sell and offer for sale merchandise produced in and typical of Czechoslovakia only. This was accepted by the Century of Progress. A contract was then entered into in which defendant agreed to abide by all the regulations imposed by the Century of Progress and agreed to sell in said pavilion

44 2015

1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 2712-2713, 2714-2715, 2716-2717, 2718-2719, 2720-2721, 2722-2723, 2724-2725, 2726-2727, 2728-2729, 2730-2731, 2732-2733, 2734-2735, 27

0.25

CLASIFICACIÓN

[illegible]

RECEIVED
JAN 10 1964

[illegible]

the obligation undertaken by officials, by the officials of a country or Progress towards all the various of that no law makes the people to be placed in the same line

in order to sell American goods and services, and more,

and were in 1914 and 1915 the United States and England

between Russia as a whole and the countries of Europe

[illegible]

only products of Czechoslovakian origin.

June 18, 1934, defendant wrote plaintiff Sachs, enclosing a copy of the rules and regulations issued by the Century of Progress and governing the space which defendant rented to plaintiffs. This was a space some 45 feet square on the left side leading to the exit; this letter again repeated that the space was rented for the sale of Czechoslovakian glass necklaces. The rules and regulations enclosed provided that the concessionaires should keep and perform all of the provisions in the application; that courtesy was required to be shown to visitors at the exposition and to other concessionaires at the exposition, and in the event of a breach by the concessionaire of any of the conditions of the application or rules or regulations the Century of Progress reserved the right to exclude the concessionaire and all persons claiming under him from the exposition grounds.

June 23, 1934, additional space was rented by defendant to plaintiffs; this was described as 33-3/10 feet on the right side leading to the exit; this ^{letter} contained the provision that the space was rented for the sale of rings with Bohemian crystal stones. July 2, 1934, defendant wrote to plaintiffs referring to a previous conversation and stated that he was renting booths Nos. 30 and 32 in the Czechoslovak Pavilion to plaintiffs. This contained the following:

"It is understood that you will sell Crystals of Czechoslovak origin only and your style of selling will not be what is called in the United States, demonstration, that is, no shouting will be allowed and I promise you that in all other booths where the same sort of merchandise is sold, the same rule will be observed," and the further statement that "if you violate the contract your stand will be closed and any amounts you may have paid us, will not be returned."

Another set of rules and regulations was enclosed with this letter and plaintiffs were requested to sign it, which they did. These rules contain the provision that no change in the type or kind of merchandise will be allowed during the duration of the exposition and that "All merchandise exhibited and sold must be of Czechoslovak

origin." Loud noises which might disturb the functioning of other exhibitors or any other acts which might damage exhibitors were prohibited.

It was further provided that if any exhibitor failed to comply with these terms A Century of Progress had the right to terminate the lease and evict the exhibitor's booth with no compensation whatever to the exhibitor. There was a further statement that a leasing of space of the Czechoslovak Pavilion was under the direct charge and authority of defendant, representing the Czechoslovakian-American Chamber of Commerce.

Also, on July 27th defendant wrote to the Century of Progress stating that Mr. Sachs, one of the plaintiffs, was permitted certain activities in the pavilion in connection with his concession, "For the purpose of selling Bohemian crystals and jewelry, rings set with Bohemian stones;" that Mr. Sachs knows the provisions of the concession obtained by defendant from the Century of Progress and expressly agrees to the same and to all its restrictions, obligations, provisions and terms. This letter was signed by the defendant, and below his signature appears a statement signed by plaintiff Sachs wherein he acknowledges and confirms all matters and things stated in the above certificate. To this the Century of Progress replied to defendant approving the contract with plaintiffs but reserving the right to prohibit the sale of any of the merchandise if, in the opinion of the Century of Progress it did not properly come within the requirements of the agreement.

The argument of plaintiff's seems to be that these writings did not contain all of the contract of leasing, and many cases are cited in support of the proposition that where writings evidently do not contain the entire contract or express the entire intention of the parties, parol evidence may be considered to supply the omissions.

As a general proposition this may be conceded, but the defendant replies that not only are the writings complete in themselves but that plaintiffs introduced no parol evidence which would modify or change these contracts. The nearest statement which might be said to touch this is the testimony of Mr. Sachs as to a conversation between himself and the defendant touching the condition expressed in the letter of July 2nd that plaintiffs would sell merchandise of Czechoslovakian origin only. In this conversation Mr. Sachs says defendant objected to any crystals not of Czechoslovakian origin; that "they will not accept a contract unless they understand that I sell only Czechoslovakian products," - to which the witness Mr. Sachs replied, "Well, what assurance have I that I will be permitted to sell souvenirs and everybody else on the fair grounds sells souvenirs, and I will protect you, see, you are protected to sell souvenirs." This is very indefinite and does not amount to any change by defendant of the obligations of plaintiffs to sell only one type of merchandise.

There was an abundance of evidence that plaintiffs did not observe their obligations to sell Czechoslovakian merchandise only, but that they persisted in selling American souvenirs. Mr. Bassett was employed by the Century of Progress as an assistant, having charge of concession operations; the Czechoslovakian concession was under his supervision; he testified that plaintiffs commenced to sell American souvenirs in July, 1934; he complained of this to the defendant and then ascertained that the objectionable souvenirs were sold by the plaintiffs, concessionaires. August 3rd, acting for the Century of Progress, Mr. Bassett wrote to defendant calling attention to the display and sale of items of merchandise in the space operated by plaintiffs which was not permissible under the terms of the contract, and immediate removal of the merchandise was demanded. Bassett testified he showed Mr. Burns the merchandise

which he could not sell and that when Mr. Sachs inquired "for what reason?" he was told that he was permitted to sell an exact type of goods; the witness testified to various attempts by plaintiffs to continue to sell objectionable American souvenirs - ash trays, belt buckles, etc., which were not of Czechoslovakian origin; witness would go in plaintiffs' booth every three or four days and would find the objectionable merchandise had been put back on the counter.

August 30th Mr. Sachs was told that if he would not remove the objectionable merchandise the Century of Progress would have to close him up. Mr. Bassett testified that he ordered the booths closed because of the persistent violation by plaintiffs of the contract whereby they were given the concession. It was proven, with scarcely any contradictory testimony, that plaintiffs' booths were closed by the officials of the Century of Progress and that defendant had nothing to do with this. Bassett was asked whether the defendant had asked the Century of Progress to stop the sale of American souvenirs in plaintiffs' booths, and replied, "No, just the opposite."

We hold that the writings contained all the essential elements of the contract between the parties and that, in any event, no parol evidence was introduced modifying or changing them. We are also of the opinion that defendant had no part in closing plaintiffs' booths; that this was done solely by the Century of Progress upon its own motion because of the repeated violations of the conditions upon which plaintiffs were granted a concession.

Plaintiffs further assert damages because, they say, they were given the exclusive right to sell Iris crystals. These seem to be important products exported from Czechoslovakia. Plaintiffs say that defendant also sold these crystals, thus violating the exclusive right given to plaintiffs. This right is said to be con-

trolled by paragraph 4 of the rules and regulations pertaining to exhibitors in the Czechoslovak Pavilion, which provides that the exhibitor first to exhibit and sell a certain line of merchandise has an exclusive right to sell these and no other exhibitor may do so without the consent of the first exhibitor in the pavilion.

Certain witnesses testified that they did not see any sale of Iris crystals by defendant until after plaintiffs had rented a booth. Against this was the testimony of defendant that he imported these Crystals prior to the opening of the exposition and began selling them at the opening of the fair. Defendant testified that he first sold Iris crystals in the pavilion when he got a shipment from Czechoslovakia in May. There was also testimony from the United States Customs Department that shipments of Iris crystals were made to defendant prior to the opening of the fair, and sales persons testified that they were sold in the Czechoslovak Pavilion by defendant about the 2nd day of June, 1934. It was thus demonstrated that plaintiffs were not the first exhibitors of these crystals and therefore did not have the right to the exclusive sale of them.

The record convinces, without any substantial doubt, that plaintiffs were not entitled to recover damages from the defendant, and the trial court's finding against defendant was in error.

When plaintiffs commenced suit they sued out a writ of attachment, asserting that defendant was a non-resident and that his place of residence could not be found. The summons was handed to the bailiff with the notation that defendant could be found at the Czechoslovak Pavilion of the Century of Progress, and both summons and writ of attachment were served at the same time. Defendant traversed the affidavit for writ of attachment, and hearing was had, counsel for plaintiffs stating he was relying solely on defendant's non-residence as grounds for attachment. The court held with plaintiffs, finding that defendant was a non-resident of the State of

[illegible]

Illinois.

Upon the hearing on the attachment defendant testified that he had come to this State from Czechoslovakia ⁱⁿ 1932; that he came to this country with the intention of attending the Northwestern University, studying international trade, and afterward in promoting commerce between Czechoslovakia and the United States; that when he came here in June, 1932, he had no knowledge that Czechoslovakia intended to participate in the Chicago Century of Progress; that since that date he has lived at various addresses in Chicago and Evanston, and that at the time of the trial he lived at 5514 Blackstone avenue and had resided there for seven months prior to the issuance of the writ of attachment; he testified to his intention to remain in Chicago in the business of promoting the sale of Czechoslovakian goods here.

Where a man has a settled and fixed abode, with the intention to remain there for a time, for business and other purposes, in law such abode is his residence and is sufficient to constitute him a resident under the attachment act. Witbeck v. Marshall-Wells Hardware Co., 88 Ill. App. 101, affirmed in 280 Ill. 134; Wager Chimney Co. v. Johnson, 306 Ill. App. 340; Jenks v. Rounds, 87 Ill. App. 254; Barron v. Burke, 82 Ill. App. 124. Residence involves the idea of a local habitation or place of abode, within the meaning of the attachment act. Witbeck v. Marshall-Wells Hdw. Co., *supra*; Wells, etc. v. The People, 44 Ill. 46. Within the meaning of the attachment act a man may have two residences. Barron v. Burke, *supra*.

Following these authorities, defendant had a fixed abode, with an intention to remain permanently in this State. He had a fixed abode for three years in Chicago. Under such circumstances the court should have found that he had a sufficient residence under the attachment act and that there was no ground for the

attachment writ to issue.

Plaintiffs in their brief do not gainsay this argument but reply only that as the money attached was released and the attachment garnishee discharged, any discussion of the principal question would be merely academic. We hold that the attachment was wrongfully issued and that the finding of the trial court on the question of damages is unsupported by the record.

The judgment will therefore be reversed, and as the case was tried by the court without a jury it will not be remanded.

REVERSED.

Matchett and O'Connor, JJ., concur.

Statement will be given.

Private in their right to not discuss this statement but
 they will say on the many points that President and the cabinet
 have provided already, any discussion of the various questions
 will be being handled. It will take the statement and especially
 issued and not the timing of the trial which is the question of
 justice is supported by the facts.

The highest will therefore be reviewed, and as the case
 was filed by the court about a year is still not be reviewed,
 statement.

Statement will be given, A. J. ...

38154

THE FIRST NATIONAL BANK OF CHICAGO
as Trustee,

Appellant,

vs.

CATHERINE BALLER et al.,
Defendants.

SAMUEL E. DAVIDSON and MURIEL
DAVIDSON, his wife,
Appellees.

30
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

282 I.A. 626²

MR. PRESIDING JUSTICE McSURELY
DELIVERED THE OPINION OF THE COURT.

In the master's report of sale in a foreclosure proceeding a deficiency judgment of \$4601.34 against Samuel E. Davidson and Muriel Davidson was recommended; objections were filed to this part of the report, which the chancellor sustained, and denied the complainant a personal deficiency decree against the defendants Davidson and wife; complainant appeals.

Defendants say they sold the premises to Marie Schmickl who assumed and agreed to pay the mortgage indebtedness, and that without their knowledge and consent she made an agreement with the holder of the notes to extend the time of payment, which released them from liability.

The master reported that July 8, 1927, the defendants Samuel E. Davidson and Muriel Davidson (hereafter called defendants) made their three promissory notes, payable to bearer, aggregating \$20,000; notes Nos. 1 and 2 were each for \$1000 and note No. 3 was for \$18,000 maturing, respectively, two, three and five years after date, secured by a trust deed conveying real estate in Cook county, Illinois, to the Foreman Trust and Savings Bank, as trustee. The bill sought to foreclose for the nonpayment of note No. 3 for \$18,000, and also for nonpayment of taxes.

The master found that note No. 1, with all interest, had been paid; that certain interest coupons on the \$18,000 note had

2. 3. 1952

DATE OF THE LAST MEETING: 1967-1968

10

...for the purpose of the ...

© 1998 Macmillan, Inc. All rights reserved. Printed in the United States of America.

0442-3463/02/0004-0000\$05.00/0

THE UNIVERSITY OF CHICAGO PRESS

11/10/1970 10:00 AM 11/10/1970 10:00 AM

At the present time the case is pending in the court of the District of Columbia. The case is being handled by the Department of Justice, and the Department of State is also involved in the matter. The case is being handled by the Department of Justice, and the Department of State is also involved in the matter.

...the

10-11-68

and their knowledge and consent was obtained with the subject at the time of payment, which followed.

1. Division and Special Division (collectively called "Divisions") shall

1. The first part of the document is a letter from the Director of the FBI to the Director of the CIA, dated 10/10/50. The letter is titled "Re: [redacted] and [redacted]". The letter discusses the activities of [redacted] and [redacted] in the United States and abroad. It mentions that [redacted] is a member of the [redacted] and that [redacted] is a member of the [redacted]. The letter also mentions that [redacted] is a member of the [redacted] and that [redacted] is a member of the [redacted]. The letter concludes by stating that the activities of [redacted] and [redacted] are of concern to the FBI and that the FBI is taking steps to investigate these activities.

...and, while waiting for the train, I saw a man who was very old and very poor, and he was sitting on the ground, looking at me with a sad expression.

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the results of its investigation of the activities of the American Friends Service Committee in the Philippines.

THE NATIONAL ARCHIVES COLLEGE PARK, MARYLAND 20740

See also 000,221 and see references therein; also 000,222

not been paid and the principal note, No. 3, due July 8, 1932, was in default; that the general taxes for 1928 and 1929 had not been paid; that the First Union Trust and Savings Bank, as successor trustee, was the legal holder and owner of note No. 3 and the unpaid interest coupons attached thereto, and of the trust deed securing them; that it had advanced various sums to redeem the premises from sales for nonpayment of special assessment warrants and also certain accounts for general taxes. The master further found that note No. 2 for \$1000 matured July 8, 1930, and that installments were paid on said note; that The Foreman Trust and Savings Bank volunteered payment of the balance due on this note and took it up uncanceled, subordinating the lien of the trust deed securing said note to the lien of the trust deed securing principal note No. 3 for \$18,000, and the interest thereon.

That on or about May 14, 1928, the defendants sold the real estate to Marie Schmickl, who assumed and agreed to pay, as part of the purchase price, the notes for the sum of \$20,000, secured by the trust deed sought to be foreclosed. Apparently the master finds that the arrangement with reference to the \$1000 note, No. 2, was made between Foreman Trust and Savings Bank and Marie Schmickl, and finds that defendants, Davidsons, had no knowledge that this note had not been paid nor that the time of payment had been extended, nor did they ever consent to such extension or any agreement for payment thereof in installments. It should be noted that this has reference only to note No. 2 and not note No. 3 for \$18,000, which is the subject matter of this foreclosure.

The master found that the total amount due was \$22,661.56, and that complainant was entitled to recover this amount from defendants and Marie Schmickl. Defendants filed objections to this report, which were overruled and stood as exceptions; the chancellor overruled the exceptions and affirmed the master's report.

[illegible]

ordered that the master make a sale and if there was a deficiency complainant should be entitled to a personal decree against the Davidsons and Marie Schmickl. A sale was had and the master reported a deficiency, and upon objections filed by defendants complainant was given a deficiency judgment against Marie Schmickl but denied a deficiency judgment against the defendants, the Davidsons.

Complainant argues that the decree of foreclosure which found complainant entitled to recover from all the defendants was final and conclusive on defendants; that the trial court had no jurisdiction to vacate and modify the first decree, as more than thirty days had elapsed from the date of its entry to the date of the final order approving the master's report and the entry of the deficiency decree. The argument is not sound. In Engelhard v. Harrison, 185 Ill. 577, it was held that the feature of the decree touching personal liability of the mortgagors is provisional and not final, as there would be no judgment in personam unless there should be a deficiency. In Harrison v. Pistorius, 249 Ill. 565, the court said:

"A decree entered in a suit for the foreclosure of a mortgage in advance of the sale, which merely establishes the right of the mortgagee to a personal money decree if the sale does not produce enough to satisfy the mortgage debt, is not a final decree from which an appeal may be taken, since there may be no deficiency, and if there is, the amount must be judicially determined."

It follows, therefore, that defendants could properly challenge a personal judgment against them by objections to the master's report of sale.

The crux of defendants' objections to the deficiency judgment against them is that Marie Schmickl assumed and agreed to pay the mortgage debt and made a binding agreement with the mortgagee for the extension of the maturity of the principal notes. It is well established that a binding extension of time of payment to a grantee

...and the
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..

The following information was obtained from the records of the Department of Social Security:

[The rest of the document contains illegible text.]

1. The first of these is the fact that the Government has not been able to secure the necessary funds to carry out its policy. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy. This is due to the fact that the Government has not been able to secure the necessary funds to carry out its policy.

who assumes and agrees to pay the mortgage debt without the mortgagor's consent, operates to discharge the mortgagor. This is because, as between the mortgagor and the grantee the grantee becomes the principal debtor, primarily liable for the debt, and the mortgagor becomes the surety, with all the consequences flowing from the relation of suretyship. Many decided cases support this rule. Albee v. Green, 230 Ill. App. 98; Douglas v. Ullsperger, 251 Ill. App. 145; Prudential Ins. Co. v. Egan, 357 Ill. 72; Johnson v. Faltner, 104 Ill. App. 171; Fryatt v. Dufrene, 106 Ill. App. 214.

While conceding that this is the rule, complainant asserts that there is nothing in the record showing that there was ever a binding agreement by anyone, with the grantee Marie Schmickl, to extend the maturity of any of the notes. Examination of the record justifies complainant's statement. As we have heretofore noted, the only reference in the master's report to any extension is concerned with note No. 3 for \$1000, which has not been included in the amount found due under this decree. There is merely an implication from the master's report that The Foreman Trust and Savings Bank, the legal owner of principal note No. 3, consented that it might be paid, after maturity, in installments. Forbearance on the part of the holder of a note could not prove a binding extension of maturity. West Suburban Btg. Co. v. Petersen Co., 273 Ill. App. 437. Mere payment of installments is not a binding legal consideration for the extension of time. Gorning Glass Works v. Adelman, 248 Ill. App. 39.

We find nothing in the record, either by implication or inference, tending to show any agreement to extend the maturity of the principal note of \$12,000, which is the subject matter of this foreclosure proceeding. The master's report of the sale, with

his recommendation for a deficiency judgment against the defendants Samuel S. Davidson and Luriel Davidson, his wife, and Marie Schmickl should have been approved and confirmed, and a deficiency judgment against all of these defendants should have been entered.

For the reasons indicated the order appealed from is reversed and the cause is remanded for further proceedings consistent with what we have said in this opinion.

REVERSED AND REMANDED.

Matchett and O'Connor, JJ., concur.

[illegible]

THE UNIVERSITY OF CHICAGO LIBRARY

...and the rest of him, which we saw with these eyes.

• • • • •

[illegible]

JOAN LEFT,
Appellee,

vs.

MAILING BROTHERS INCORPORATED,
a Corporation,
Appellant.

APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

282 I.A. 626³

MR. PRESIDING JUSTICE MCCHESNEY
DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit to recover damages for personal injuries and upon trial had a verdict of \$3000. Defendant appeals from the judgment.

The only question presented is one of fact. Plaintiff, a professional dancer, about two o'clock in the afternoon of December 16, 1932, was entering the vestibule of the store owned and operated by the defendant on Roosevelt Road in Chicago; it was very cold, the temperature having been below zero in the forenoon of the day and at three o'clock that afternoon was nine degrees above zero; the floor of the vestibule was marble and the surface very smooth; shortly before the accident an employee of defendant sopped the floor of the vestibule with water which froze, making the floor slippery.

After plaintiff had entered the vestibule and taken four or five steps from the sidewalk her feet flew from under her and she fell to the floor; after she fell she noticed ice on the floor of the vestibule; her hip bones and the lower end of the vertebrae were injured. The amount of the verdict is not questioned. There was some evidence that alcohol was put in the water used in sopping the vestibule floor. Apparently alcohol would prevent freezing. But the man who did the sopping testified there was no alcohol in the water as far as he knew.

The jury could properly find that defendant was negligent in having the marble floor of the vestibule sopped with water in the afternoon of a cold day with the temperature near zero, knowing

1941

•

• 1980-1981

James E. Leonard

1939.A.I.232

THE UNIVERSITY OF CHICAGO

and continued for several years at the James White.

Signature: [Signature] Date: [Date]

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1. The following information is for your information only and is not to be used for any other purpose.

[illegible]

Rejection of the above facts can be significant and, indeed, will

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 01-27-2001 BY 60322 JAL/STP

[illegible]

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840. 84

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

14-00000

RECEIVED
JAN 10 1967

Some evidence that alcohol was not the only factor in the case is provided by the fact that the victim was not drinking at the time of the attack.

Penitentiary Dept., San Francisco, California, February 1906.

and at least one of the other parties to the contract.

...and the

1. The first two columns are the same as the first two columns of the first table.

THE UNITED STATES DEPARTMENT OF AGRICULTURE

...and, when you are done, send him your love and a letter telling him

that the water would freeze on the floor. There was no evidence that there was any dirt on the floor of the vestibule at this time or that there was any necessity to mop it. Defendant should have furnished a rubber mat or something upon which patrons of the store could walk without slipping on the icy floor of the vestibule entrance to the store.

There is no need to discuss the various decided cases cited by respective counsel. No case involves precisely the same facts. The facts were peculiarly for the jury to determine and we cannot say that the verdict was against the manifest weight of the evidence. The judgment is therefore affirmed.

AFFIRMED.

Hatchett and O'Connor, JJ., concur.

WILLIAM H. SOMMERS, Executor of
Estate of JAMES L. BYNUM, Deceased,
and A. B. CHREANOVSKI,

Appellants,

vs.

E. SABATH, A. H. KAUFFMAN, RUTH
KAUFFMAN and ALLO KAUFFMAN, doing
Business as SABATH & KAUFFMAN,
Appellees.

APPEAL FROM MUNICIPAL

COURT OF CHICAGO.

222 I.A. 626⁴

MR. PRESIDING JUSTICE McARDLE
DELIVERED THE OPINION OF THE COURT.

This case is to enforce a claim for attorneys' lien, heard by the trial court which disallowed the claim, finding for the defendants. Plaintiff's appeal. A recital of the facts establishes the propriety of the judgment.

November 9, 1929, Peter Zalowski received personal injuries as the result of an accident through the alleged negligence of the defendants; he was taken to the County hospital where after a few days he was visited by H. B. Bellwig, an investigator for P. L. McArdle, an attorney; as a result of this interview Zalowski employed Mr. McArdle to represent him in his claim for damages against the defendants. December 10, 1929, McArdle caused a notice of attorneys' lien to be served upon defendants. The agreement between Zalowski and McArdle was put in writing and dated February 21, 1930; by it plaintiff retained irrevocably Mr. McArdle to represent him as his attorney to collect damages, either by suit or otherwise, from the defendants for his injuries, giving McArdle full power and authority to settle, sue, or do all things in the matter as if plaintiff were personally present, agreeing to pay him $33 \frac{1}{3}\%$ of whatever amount might be received from the defendants.

McArdle had several interviews with the attorney for the defendants in regard to plaintiff's claim; defendants made an offer of settlement of \$2500, which was communicated by McArdle to

Zalewski, who was holding out for \$3000.

About March 1, 1930, A. M. Chrzanowski, one of the plaintiffs, called upon Zalewski and made certain representations to the effect that McArdle represented insurance companies, and that he, Chrzanowski, could get Zalewski \$10,000 in damages; by these representations he obtained from Zalewski a signed contract appointing James L. Bynum and Chrzanowski his attorneys to represent his claim, and March 31, 1930, the defendants were served with a notice of attorneys' lien by Bynum and Chrzanowski.

Defendants turned this letter over to their insurance man who wrote to Bynum advising him that defendants had already received a notice of lien in the same case from attorney McArdle; at the same time the insurance man also wrote to Mr. McArdle advising him of the Bynum and Chrzanowski notice of attorneys' lien; McArdle then suspended his negotiations with the defendants and in April, 1930, Bynum and Chrzanowski filed a suit in the Superior court on behalf of Zalewski; it was reached for trial in the spring of 1931, but continued until September.

Zalewski then called upon McArdle, expressing dissatisfaction with the way Bynum and Chrzanowski were handling the case; he asked McArdle to take the case back again; McArdle told him that the only way this could be done would be for Zalewski to discharge Bynum and Chrzanowski as his attorneys. McArdle subsequently told Bynum of Zalewski's wishes and Bynum told McArdle that he could do anything he liked in the matter. Thereupon McArdle drew a letter dated July 1, 1931, addressed to Bynum and Chrzanowski, which was signed by Zalewski, in which he discharged them from handling his case and directed that they turn all papers over to Mr. McArdle, whom he had originally employed in the matter. This was served upon Bynum and Chrzanowski.

Mr. McArdle resumed negotiations with the attorney for the

...and the

1871

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

...and

SECRET

10. solidus = the lowest temperature at which the alloy is completely liquid. If cooled below

... ..

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

the state is being visited by the federal government.

14-00000

...and the ...

10-11-1964

2015-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046-10

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-11-2010 BY 60322 UCBAW

... ..

... ..

1. The following information is being furnished to you for your information:

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Just like that, without a single word more or less, it is finished.

only one of the many ways in which we can help you to help others.

From the University of Illinois at Chicago, Chicago, Illinois

doi:10.1371/journal.pone.0184042.g002

Copyright © 2000 by John Wiley & Sons, Inc.

was in the 1950s, and the growth of membership in 1974 is well noted.

[illegible]

... ..

Downloaded from <http://ajphaphysoc.phapublications.org/> at University of California, San Diego on November 10, 2014

Edwardsia (no morph. desc.)

... and

defendants and they reached an agreement to settle the case for \$3000; Mr. McCardle then told Mr. Bynum of this and suggested that if he had any claim for expenses or fees they should go before Judge Kavanaugh and have the matter settled by the court; Bynum told McCardle he would not bother about it. Subsequently McCardle served notice on these attorneys to appear before Judge Kavanaugh on July 7, 1931, and moved that he be substituted as an attorney for the plaintiff in lieu of Bynum and Chrusnowski. Such an order was entered but no one appeared on behalf of the other attorneys. Subsequently defendants settled the case by paying \$3000 to plaintiff, and a stipulation was filed August 14, 1931, to dismiss the suit without further costs.

Mr. Bynum died January 16, 1934, and no steps were taken by him during his lifetime to enforce any claim. After his death his executor, on July 27, 1934, brought the present suit.

Plaintiffs are not entitled to a lien as the notice of attorneys' lien served by them on the defendants in that suit was subsequent to the employment of Mr. McCardle and his notice of attorney's lien served on defendants. Boyer v. Boyer, 236 Ill. 412, held that notice claiming a lien served on the defendant or debtor has the effect of an assignment of an interest in any judgment that may be entered or in the proceeds of any settlement that may be made. See also Tulka v. Chicago City Ry. Co., 259 Ill.App. 234; Caruso v. Felling, 271 Ill. App. 312, and Standridge v. Chicago Ry. Co., 254 Ill. 524. Cases cited by plaintiffs are not contrary.

The judgment of the trial court is proper and it is affirmed.

AFFIRMED.

Wachtett and O'Connor, JJ., concur.

MARY JANE MALONEY, a minor, by THOMAS
J. MALONEY, her Father and Next Friend,
Appellee,

vs.

BIRD THEATRE CORPORATION, a Corporation,
Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

232 I.A. 6271

MR. PRESIDING JUSTICE McMURPHY
DELIVERED THE OPINION OF THE COURT.

Plaintiff, a minor, brought suit for personal injuries and upon trial by the court had judgment for \$200, from which defendant appeals.

Plaintiff, then about nine years of age, went in the afternoon to the Highland Theatre, owned and operated by the defendant; she purchased a ticket and the stub was returned to her and she was informed she could exchange the stub for a free ride on a pony in the lot across the street from the theatre; after she she went across to the lot and gave the stub to an attendant, who helped her onto a pony. One of the attendants said he started to lead the pony but plaintiff wished to go by herself. As she came near an iron stake or pipe which was driven into the ground to hold ropes the pony walked so close to the pipe that plaintiff's leg was struck by it and cut.

Defendant asserts that it had nothing to do with the operation of the lot or ponies; that their management was in the hands of an independent contractor, not a servant or agent of the defendant. Plaintiff files no brief in this court to support the judgment.

A few days prior to this accident the manager of the defendant theatre made an arrangement with William Hoyer, who was the owner of the ponies, whereby Hoyer was to allow one free ride on the ponies to any child presenting a stub from a theatre ticket. After this first ride Hoyer charged five cents for each ride. The de-

STATE OF NEW YORK,
COUNTY OF ALBANY,
IN SENATE,
January 1, 1888.

REPORT OF THE
COMMISSIONER OF THE
LAND OFFICE.

ALBANY: J. B. LEECH, PRINTERS.
1888.

ALBANY: J. B. LEECH, PRINTERS.
1888.

ALBANY: J. B. LEECH, PRINTERS.
1888.

ALBANY: J. B. LEECH, PRINTERS.
1888.

ALBANY: J. B. LEECH, PRINTERS.
1888.

ALBANY: J. B. LEECH, PRINTERS.
1888.

endant did not own or lease the lot, did not own the ponies, and the attendants in charge of the lot and ponies were employees of Meyer. Manifestly, neither Meyer nor his employees were the agents or servants of defendant. At most, Meyer was an independent contractor, although the evidence does not show the details of the arrangement between him and the defendant with reference to the free pony rides. The negligence was in the failure of the employees of Meyer to guide the pony so that it would not go near stakes or ropes which might strike the infant rider, thus injuring her. But these employees or attendants were not subject to any orders of defendant nor related to it in any way whatever.

The evidence failed to support the charge of negligence of the defendant, and the judgment must be reversed. As the case was tried by the court it will not be remanded.

REVERSED.

Batchett and O'Connor, JJ., concur.

38202

VINCENT G. GALLAGHER,
Appellee,

vs.

ELI METCOFF,
Appellant.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

282 I.A. 627²

MR. PRESIDING JUSTICE McSweeney
DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit to recover moneys paid out, as alleged, at the instance and request of the defendant; upon trial before a jury the defendant introduced no evidence, and upon an instruction from the court the jury returned a verdict for plaintiff, assessing his damages at \$541.84; defendant appeals from the judgment.

Defendant asserts that plaintiff paid out the money he is seeking to recover as part of a partnership venture in which both parties were partners, and therefore plaintiff must resort to a proceeding in chancery for an accounting.

Plaintiff testified that he, with the defendant, was a member of a syndicate making joint investments in certain parcels of real estate; the same persons were not always in the different ventures; in the particular transactions in question the members of the syndicate were Charles W. Ostrander, Frank A. Ostrander, the defendant and the plaintiff. Plaintiff managed these properties, looked after buying them, rendered all the legal services that were necessary and received a fixed compensation for his services if and when the properties were sold; plaintiff paid, from year to year, carrying charges such as taxes, interest, etc., and once a year rendered a statement to the different members of the syndicate covering all receipts and disbursements; the syndicate had an auditor who prepared these accounts and proportioned the items and had them mailed to the different persons interested; all of the members of the syndicate paid according to these statements except

THE UNITED STATES OF AMERICA

IN SENATE

1900

COMMITTEE ON THE JUDICIARY

REPORT

282 I.A. 627

REPORT OF THE COMMITTEE ON THE JUDICIARY
IN SENATE

Respectfully submitted to the Senate by the Committee on the Judiciary, in accordance with the request of the Senate, and in compliance with the provisions of the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States.

The Committee on the Judiciary, in accordance with the request of the Senate, and in compliance with the provisions of the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States.

Respectfully submitted to the Senate by the Committee on the Judiciary, in accordance with the request of the Senate, and in compliance with the provisions of the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States, and the Act of March 3, 1875, relating to the organization of the courts of the United States.

the defendant, who refused to pay the items for which suit was brought.

In National Surety Co. v. Townsend Bridge Co., 175 Ill. 156, it was held that while an agreement between parties to share the profits and losses raises a presumption of partnership, yet if the parties actually meant that there should be no partnership created the presumption would be rebutted. The fact that there was to be divided profits would not make them partners. Connan v. Gross, 3 Ill. App. 409; Wiermont v. Langhans, 104 Ill. App. 535. Nor would a division of losses. Briggs v. Kohl, 132 Ill. App. 484. Parties to a joint enterprise are not necessarily partners. Chicago Dis & Electric Co. v. Nathan, 141 Ill. App. 171. Special agreements for particular adventures and joint undertakings do not make a partnership. Page v. Hallen & Co., 212 Ill. App. 462. The burden of proving a partnership in this case rested with the defendant. Furber v. Page, 143 Ill. 622. In this case it was held that the burden of proving the existence of a partnership devolves upon the party alleging the same and that where land is bought by two persons, taking the title in the name of one, the other to devote his services as an architect in the erection of buildings thereon, all for their joint benefit, in the absence of proof of any other or inconsistent intention, existence of a partnership as to the enterprise fails of proof. We hold that the evidence in the present case fails to establish that the parties associated in this syndicate were associated as partners.

Even if the parties were partners, the obligation sued upon was personally due from defendant to plaintiff and ^{not} to the syndicate group. Plaintiff personally advanced the money to carry these properties with the understanding that he would be repaid by the members of the syndicate in their proportionate shares. The money does not belong to any other members of the syndicate. In Hayden

v. Craig, 253 Ill. App. 236, it was held that if the damages resulting from a breach of a partnership agreement by one partner belonged exclusively to another partner and not to the firm, the injured partner may recover against the other for such damages. See also Tichenor v. Lewman, 136 Ill. 204, and Carter v. Sawyer, 142 U. S. 632, which involved a joint enterprise for the purchase of land, involving the payment in equal proportions of certain sums of money.

Moreover, plaintiff testified that defendant had admitted receiving the statement and had promised to send plaintiff a check. It should also be noticed that defendant recognized this method of doing business over a period of years, allowing the plaintiff to advance moneys to aid defendant's interests, for which he reimbursed plaintiff except in the present instance. His present claim of partnership is inconsistent with his former conduct.

There was no issue to be submitted to the jury, the defendant offering no evidence. Therefore the court properly directed a verdict for the plaintiff.

Plaintiff asks not only for an affirmance of the judgment but claims that this appeal is only for delay and that statutory damages should be allowed. We are inclined to hold with this claim, and therefore shall affirm the judgment and also assess the sum of \$50 against the defendant as statutory damages.

AFFIRMED AND STATUTORY DAMAGES OF
\$50 ALLOWED.

Witchett and O'Connor, JJ., concur.

7 pages.

The following information was obtained from the records of the Bureau of Investigation:

[The remainder of the page contains several lines of extremely faint, illegible text.]

was sitting in a chair. The doctor in the room was looking at a
- There was no one in the room to be admitted to the room, and the doctor

and the fact that the only way to get the information out of the machine is to use the same code as the machine used to put it in. This is the only way to get the information out of the machine and it is the only way to get the information out of the machine.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-14-2014 BY 60322

© 2000 John Wiley & Sons, Inc.

38221

ANTON O. SATRANG,
Appellant,

vs.

CITY OF CHICAGO,
Appellee.

APPEAL FROM SUPERIOR COURT

OF COOK COUNTY.

202 I.A. 627³

MR. PRESIDING JUSTICE McBURNEY
DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit for damages to his property, 303 West South Water street, Chicago, alleged to have been caused by the Wacker Drive improvement on the south side of the Chicago River; upon trial the verdict was adverse to plaintiff and he appeals from the judgment.

By his declaration plaintiff alleged that the grade of West South Water street in front of his property was lowered considerably over ten feet; that defendant erected a pillar or column in front of his premises between the lower level of Wacker Drive and the upper level, rendering ingress and egress to his premises by way of the highway practically impossible. The declaration averred other items of damage but no evidence was introduced to support them.

An important question presented at the outset is the extent to which the street in front of the premises was lowered. Plaintiff says the evidence shows that before the Wacker Drive improvement the street level was 14 plus above city datum; that by this improvement it was lowered to 5 feet above city datum, or a total depression of approximately 9 feet.

Defendant controverts this and says the evidence shows that prior to July 16, 1930, the grade of the street at this point was plus 14 above city datum, but in that year the construction of a bridge across the Chicago River called the Franklin-Orleans bridge, was commenced; that to provide proper approaches to this bridge the street in front of 303 West South Water street was depressed

2008年

6. *Chlorophyll a* and *Chlorophyll b*

10

... ..

PAGE THREE

• *Verdichtungen* (1992) •

733 .A.1 S2S

LEWIS AND CLARK NATIONAL MONUMENT, NEB.
FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

1. RESEARCHER'S NAME

14. The following information is for your information only:

001 000 7714 0000 00 00000000 0000 00000000 0000 00000000 0000 00000000

10. The following are the names of the persons who have been appointed to the various committees of the Board of Directors:

[illegible][illegible]

Figure 1. The effect of the concentration of the polymer on the gelation time of the epoxy resin.

1971-1972

...and the

of September was cancelled as the school was closed for the month.

1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 26

7-69204-8 5-12-68 100% 100% 100% 100% 100% 100% 100% 100% 100% 100%

[illegible]

THE UNIVERSITY OF CHICAGO

Unauthorized circulation of this document is prohibited. If you have a copy of this document, please return it to the nearest FBI office.

no longer. But it is not, and it will not be, a day of triumph for us.

1907

3-11 7-11 12-11 13-11 14-11 15-11 16-11 17-11 18-11 19-11 20-11 21-11 22-11 23-11 24-11 25-11 26-11 27-11 28-11 29-11 30-11

THEY TALKED ABOUT THE FUTURE OF THE COUNTRY AND THE NEED FOR A NEW CONSTITUTION.

2. To determine how many times each of the 1000s will appear in the next 10000 trials.

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

CONFIDENTIAL - SECURITY INFORMATION

For instance, the following table shows the results of a survey of the use of the word "God" in the Bible.

approximately 7 feet, leaving the grade approximately 7 feet above city datum; that this work was commenced July 16, 1920, and completed October 23, 1920, when plaintiff did not own the property in question. By plaintiff's declaration it appears that in July, 1920, a suit was instituted by the prior owners against the city asking for damages by reason of this change in grade, and they recovered a judgment in the sum of \$17,500. Subsequently plaintiff acquired the property by deeds dated October 1, 1921, and January 23, 1922. At this time the street adjacent to this property, although lowered to 7 feet above city datum, was not in other respects finished as the City was awaiting the proposed Vacker Drive with its two levels, upper and lower, and this condition continued until on or about November 1, 1924, when the final work on Vacker Drive was commenced. This drive was completed March 1, 1925.

Defendant therefore asserts that when plaintiff acquired the property the street had already been lowered from plus 14 to approximately 7 feet above city datum, and that after plaintiff acquired the property the street was depressed from 7 feet to 5 feet above city datum by the Vacker Drive improvement, or approximately 2 feet.

Plaintiff says that the depressed street at the time he acquired the property was in a temporary condition. This may be true, but plaintiff acquired the property with the street depressed as it then was. The prior owners have already recovered damages for that depression and we do not see upon what theory plaintiff may also recover damages for the same depression. Although the evidence is not altogether clear in this respect, we are of the opinion the jury could properly find with defendant's position in the matter.

The presence of the upright column in front of plaintiff's property, running from the lower to the upper level of Vacker Drive, is conceded, but defendant's position seems to be that while this may be a detriment to the property, yet on the whole the value of

approximately 7 feet, located the entire approximately 7 feet above
 city datum; that this work was commenced July 14, 1931, and was
 dated October 22, 1931, when visibility was not over the property
 in question. By visibility's definition is wherever there is 40 ft.
 1931, a wall was demolished by the other owner's agent and city
 and the bridge by reason of this change in ground, and many the
 covered a judgment to the end of 1931, and approximately visibility
 assigned the property of land dated October 1, 1931, and January
 22, 1932. At this time the street adjacent to this property, 40-
 through lowered to 7 feet above city datum, was not in front of the
 finished at the city was existing the proposed Kansas State with the
 the levels, street was paved, and the existing conditions were as
 of about November 1, 1931, when the land with on October 1931 was
 completed. This work was completed March 1, 1932.

Comments: Engineer's report that when visibility assigned the
 property the street had already been lowered five feet in its entire-
 length 7 feet above city datum, and that after visibility assigned
 the property the street was lowered from 7 feet to 5 feet above
 city datum by the Kansas State Improvement, as approximately 2 feet.
 Visibility says that the judgment of the fact is not
 quite the property was in a temporary condition. This may be true,
 but visibility says that the property with the street was lowered as it
 was was. The other owner says already lowered because the fact
 depression and he is not sure when the property was lowered and also
 property because the fact was depression. Although the evidence is
 not altogether clear in this respect, as the at the elevation the
 fact/ says property that the engineer's condition in the matter.
 The presence of the engineer's claim in favor of visibility's
 property, showing that the fact is the other level of Kansas State,
 is consistent with visibility's condition/ says as it will take
 up as a judgment of the property, but as the fact was not as

the property has been so increased by virtue of the Wacker Drive improvement that there are no damages resulting.

The measure of damages, if any, which plaintiff might recover, would be the difference between the fair cash market value of his property immediately before the work was commenced and the fair cash market value of his property immediately after the work was completed, provided such difference was caused or occasioned solely by the public work.

Two witnesses testified on behalf of plaintiff as to values. The witness Lyons gave his opinion that before the work commenced plaintiff's property was worth \$40,000, and that after the work was completed it was worth \$50,000. Another witness, Krussing, valued the property before the work commenced at \$42,360 and \$24,300 after the work was completed. As against these, three witnesses testified ^{that} for defendant that, considering the property of plaintiff had a higher and better use after the public improvement than it had before, the value of plaintiff's property had increased due to this improvement. Two witnesses estimated this increase at \$7,750, and the other witness at \$16,500. It will thus be seen that the finding of the jury that plaintiff had suffered no damages was well within the range of the testimony. Moreover, the jury viewed the premises during the progress of the trial, which must be given ^{much} weight by a reviewing court. No convincing reason is presented to question the conclusion of the jury in this respect.

Counsel for plaintiff feelingly complains of the remarks made by counsel for defendant to the jury. It is said they were highly prejudicial and inflammatory. Plaintiff did not appear at the trial and defendant's counsel commented upon this to the jury. According to the abstract he said, "I would like to see Mr. Intrang. I would like to see this man. He is probably a high class man that is not trying to get anything that he is not entitled to." Plain-

the property has been in possession of the United States Government since 1945 and is now being transferred to the Department of the Interior.

was completed, enclosed with documents and placed in a container. This was placed in the trunk of the car and the car was driven to the garage. The trunk was opened and the container was removed. The container was opened and the documents were removed. The documents were placed in a folder and the folder was placed in the trunk. The trunk was closed and the car was driven to the garage. The trunk was opened and the container was removed. The container was opened and the documents were removed. The documents were placed in a folder and the folder was placed in the trunk. The trunk was closed and the car was driven to the garage.

1992-1993

...regard to the

The witness found the vehicle in the area of the intersection of the street and the highway, and that the vehicle was in the area of the intersection of the street and the highway.

1947-1948, 1949-1950, 1951-1952, 1953-1954, 1955-1956, 1957-1958, 1959-1960, 1961-1962, 1963-1964, 1965-1966, 1967-1968, 1969-1970, 1971-1972, 1973-1974, 1975-1976, 1977-1978, 1979-1980, 1981-1982, 1983-1984, 1985-1986, 1987-1988, 1989-1990, 1991-1992, 1993-1994, 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 26

There, the value of Hamilton's property had increased due to this

of the Army and Navy Departments and the War and Navy Departments.

reviewing report. The reviewing report is prepared by a
 During the process of the trial, which must be reviewed by a
 much

...by means of the following is the fact. It is said that the

the trial and defendant's counsel requested open this to the jury.

is not a valid reason for not making the change.

tiff's counsel says that the abstract showing this remark, although it was prepared by him, is incorrect; that defendant's counsel, in fact, said "He (Satveng) is probably the class of man that is trying to get something he is not entitled to." Defendant's counsel could properly argue to the jury that plaintiff was not entitled to damages, and his comment, whatever the precise language used, was within the bounds of proper argument. Complaint is made of further remarks, but such remarks merely called attention of the jury to the non-presence of the plaintiff, which we think was not improper. We find nothing in the remarks of defendant's counsel which would compel a reversal.

Some complaint is made of the conduct of the trial court in examining the panel of prospective jurors, but we find nothing prejudicial in this. The questions to the court were merely preliminary and neither counsel was prevented from asking further questions, and counsel for plaintiff made no objection to the proceedings.

Defendant's exhibit 2, of which plaintiff complains, is a rather complicated engineer's drawing purporting to show the conditions of South Water street before the work started on Wacker Drive. It is full of figures and we have considerable doubt as to whether it would be understood except by an engineering expert. The complaint seems to be that it was introduced in evidence without any testimony as to who made it, or when. However, a witness testified for the City that he was an assistant engineer of the board of local improvements for Chicago, had worked on the Wacker Drive improvement, had made surveys of the street and was familiar with the ordinance; that he had checked the measurements on defendant's exhibit No. 2 and that they were substantially correct; that it contained practically the same data and material contained in the drawing attached to the ordinance authorizing the improvement and shows practically the situation as it existed when the drawing was attached to the

1. The first of these is the fact that the Government has not been able to secure the cooperation of the private sector in the development of the country. This is due to a number of factors, including the lack of a clear legal framework for private investment, the absence of a reliable judicial system, and the prevalence of corruption. These factors have led to a lack of confidence in the Government and a reluctance on the part of private investors to commit capital to the country.

[illegible]

1. The following information was obtained from the records of the Federal Bureau of Investigation, New York City, dated 10/10/40, and 10/11/40, and 10/12/40, and 10/13/40, and 10/14/40, and 10/15/40, and 10/16/40, and 10/17/40, and 10/18/40, and 10/19/40, and 10/20/40, and 10/21/40, and 10/22/40, and 10/23/40, and 10/24/40, and 10/25/40, and 10/26/40, and 10/27/40, and 10/28/40, and 10/29/40, and 10/30/40, and 10/31/40, and 11/1/40, and 11/2/40, and 11/3/40, and 11/4/40, and 11/5/40, and 11/6/40, and 11/7/40, and 11/8/40, and 11/9/40, and 11/10/40, and 11/11/40, and 11/12/40, and 11/13/40, and 11/14/40, and 11/15/40, and 11/16/40, and 11/17/40, and 11/18/40, and 11/19/40, and 11/20/40, and 11/21/40, and 11/22/40, and 11/23/40, and 11/24/40, and 11/25/40, and 11/26/40, and 11/27/40, and 11/28/40, and 11/29/40, and 11/30/40, and 12/1/40, and 12/2/40, and 12/3/40, and 12/4/40, and 12/5/40, and 12/6/40, and 12/7/40, and 12/8/40, and 12/9/40, and 12/10/40, and 12/11/40, and 12/12/40, and 12/13/40, and 12/14/40, and 12/15/40, and 12/16/40, and 12/17/40, and 12/18/40, and 12/19/40, and 12/20/40, and 12/21/40, and 12/22/40, and 12/23/40, and 12/24/40, and 12/25/40, and 12/26/40, and 12/27/40, and 12/28/40, and 12/29/40, and 12/30/40, and 12/31/40, and 1/1/41, and 1/2/41, and 1/3/41, and 1/4/41, and 1/5/41, and 1/6/41, and 1/7/41, and 1/8/41, and 1/9/41, and 1/10/41, and 1/11/41, and 1/12/41, and 1/13/41, and 1/14/41, and 1/15/41, and 1/16/41, and 1/17/41, and 1/18/41, and 1/19/41, and 1/20/41, and 1/21/41, and 1/22/41, and 1/23/41, and 1/24/41, and 1/25/41, and 1/26/41, and 1/27/41, and 1/28/41, and 1/29/41, and 1/30/41, and 1/31/41, and 2/1/41, and 2/2/41, and 2/3/41, and 2/4/41, and 2/5/41, and 2/6/41, and 2/7/41, and 2/8/41, and 2/9/41, and 2/10/41, and 2/11/41, and 2/12/41, and 2/13/41, and 2/14/41, and 2/15/41, and 2/16/41, and 2/17/41, and 2/18/41, and 2/19/41, and 2/20/41, and 2/21/41, and 2/22/41, and 2/23/41, and 2/24/41, and 2/25/41, and 2/26/41, and 2/27/41, and 2/28/41, and 2/29/41, and 2/30/41, and 3/1/41, and 3/2/41, and 3/3/41, and 3/4/41, and 3/5/41, and 3/6/41, and 3/7/41, and 3/8/41, and 3/9/41, and 3/10/41, and 3/11/41, and 3/12/41, and 3/13/41, and 3/14/41, and 3/15/41, and 3/16/41, and 3/17/41, and 3/18/41, and 3/19/41, and 3/20/41, and 3/21/41, and 3/22/41, and 3/23/41, and 3/24/41, and 3/25/41, and 3/26/41, and 3/27/41, and 3/28/41, and 3/29/41, and 3/30/41, and 3/31/41, and 4/1/41, and 4/2/41, and 4/3/41, and 4/4/41, and 4/5/41, and 4/6/41, and 4/7/41, and 4/8/41, and 4/9/41, and 4/10/41, and 4/11/41, and 4/12/41, and 4/13/41, and 4/14/41, and 4/15/41, and 4/16/41, and 4/17/41, and 4/18/41, and 4/19/41, and 4/20/41, and 4/21/41, and 4/22/41, and 4/23/41, and 4/24/41, and 4/25/41, and 4/26/41, and 4/27/41, and 4/28/41, and 4/29/41, and 4/30/41, and 5/1/41, and 5/2/41, and 5/3/41, and 5/4/41, and 5/5/41, and 5/6/41, and 5/7/41, and 5/8/41, and 5/9/41, and 5/10/41, and 5/11/41, and 5/12/41, and 5/13/41, and 5/14/41, and 5/15/41, and 5/16/41, and 5/17/41, and 5/18/41, and 5/19/41, and 5/20/41, and 5/21/41, and 5/22/41, and 5/23/41, and 5/24/41, and 5/25/41, and 5/26/41, and 5/27/41, and 5/28/41, and 5/29/41, and 5/30/41, and 5/31/41, and 6/1/41, and 6/2/41, and 6/3/41, and 6/4/41, and 6/5/41, and 6/6/41, and 6/7/41, and 6/8/41, and 6/9/41, and 6/10/41, and 6/11/41, and 6/12/41, and 6/13/41, and 6/14/41, and 6/15/41, and 6/16/41, and 6/17/41, and 6/18/41, and 6/19/41, and 6/20/41, and 6/21/41, and 6/22/41, and 6/23/41, and 6/24/41, and 6/25/41, and 6/26/41, and 6/27/41, and 6/28/41, and 6/29/41, and 6/30/41, and 7/1/41, and 7/2/41, and 7/3/41, and 7/4/41, and 7/5/41, and 7/6/41, and 7/7/41, and 7/8/41, and 7/9/41, and 7/10/41, and 7/11/41, and 7/12/41, and 7/13/41, and 7/14/41, and 7/15/41, and 7/16/41, and 7/17/41, and 7/18/41, and 7/19/41, and 7/20/41, and 7/21/41, and 7/22/41, and 7/23/41, and 7/24/41, and 7/25/41, and 7/26/41, and 7/27/41, and 7/28/41, and 7/29/41, and 7/30/41, and 7/31/41, and 8/1/41, and 8/2/41, and 8/3/41, and 8/4/41, and 8/5/41, and 8/6/41, and 8/7/41, and 8/8/41, and 8/9/41, and 8/10/41, and 8/11/41, and 8/12/41, and 8/13/41, and 8/14/41, and 8/15/41, and 8/16/41, and 8/17/41, and 8/18/41, and 8/19/41, and 8/20/41, and 8/21/41, and 8/22/41, and 8/23/41, and 8/24/41, and 8/25/41, and 8/26/41, and 8/27/41, and 8/28/41, and 8/29/41, and 8/30/41, and 8/31/41, and 9/1/41, and 9/2/41, and 9/3/41, and 9/4/41, and 9/5/41, and 9/6/41, and 9/7/41, and 9/8/41, and 9/9/41, and 9/10/41, and 9/11/41, and 9/12/41, and 9/13/41, and 9/14/41, and 9/15/41, and 9/16/41, and 9/17/41, and 9/18/41, and 9/19/41, and 9/20/41, and 9/21/41, and 9/22/41, and 9/23/41, and 9/24/41, and 9/25/41, and 9/26/41, and 9/27/41, and 9/28/41, and 9/29/41, and 9/30/41, and 10/1/41, and 10/2/41, and 10/3/41, and 10/4/41, and 10/5/41, and 10/6/41, and 10/7/41, and 10/8/41, and 10/9/41, and 10/10/41, and 10/11/41, and 10/12/41, and 10/13/41, and 10/14/41, and 10/15/41, and 10/16/41, and 10/17/41, and 10/18/41, and 10/19/41, and 10/20/41, and 10/21/41, and 10/22/41, and 10/23/41, and 10/24/41, and 10/25/41, and 10/26/41, and 10/27/41, and 10/28/41, and 10/29/41, and 10/30/41, and 10/31/41, and 11/1/41, and 11/2/41, and 11/3/41, and 11/4/41, and 11/5/41, and 11/6/41, and 11/7/41, and 11/8/41, and 11/9/41, and 11/10/41, and 11/11/41, and 11/12/41, and 11/13/41, and 11/14/41, and 11/15/41, and 11/16/41, and 11/17/41

ordinance prior to the commencement of the work. Under these circumstances it was proper to admit it.

Other criticisms are made of the rulings on evidence, but we find nothing of sufficient importance to require comment. On the whole, the court conducted the trial fairly and impartially and no prejudicial errors were committed.

The verdict was within the range of the testimony, and the judgment is affirmed.

AFFIRMED.

Matchett and O'Conner, JJ., concur.

estimated value of the investment of the trust. Under these cir-

cumstances it was found to be \$2.

Given findings are made of the value of the property.

and the time required to complete the project.

on the whole, the project is a very large and profitable

and an excellent thing to do.

The project was found to be a very large and profitable

business to do.

and a very large and profitable business to do.

Business and Finance, N.Y., 1911.

38245

CYRUS H. MCCORMICK, HAROLD F. MCCORMICK
and STANLEY MCCORMICK, as Trustees,
Appellees,

vs.

JAMES C. O'BRIEN, Jr.,
Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 627⁴

MR. PRESIDING JUSTICE MCSURELY
DELIVERED THE OPINION OF THE COURT.

Plaintiffs had judgment by confession for \$2296.55, by virtue of a power of attorney to confess judgment contained in a lease of office space in a building in Chicago; defendant filed a petition asking for vacation of the judgment with leave to defend; counter affidavits were filed by plaintiffs objecting to the motion and petition; defendant moved to strike plaintiffs' counter affidavits, which motion was overruled, and defendant's motion to vacate the judgment was denied.

Plaintiffs' statement of claim alleged the execution, by plaintiffs as lessors and the defendant as lessee, of a lease for a term of two years beginning May 1, 1932, in which defendant agreed to pay rental in monthly installments on the first day of each calendar month; that there was a rent balance due for months of May, 1933, to and including April, 1934, amounting to \$2114.10, still in arrears, together with attorneys' fees provided for in the lease.

Defendant in his petition to vacate admitted the execution of the lease and that he entered into and occupied the premises, paying rent; he says that shortly prior to May 15, 1933, defendant notified the agent of the building that he would no longer continue to occupy the premises, and that on approximately the above mentioned date defendant quit and surrendered the premises, since which time the defendant in no way or manner has had the use or occupation of said premises. This did not present a meritorious defense. It presents

THOMAS H. MCCORMICK, HENRIETTA M. MCCORMICK,
and GEORGE MCCORMICK, as tenants,
vs.

CURTIS C. BROWN,

Plaintiff,
vs.
Defendant.

222 I.A. 637

IN SENATE
JANUARY 10, 1933

Plaintiffs' motion for judgment by confession for \$2000.00, by virtue of a power of attorney to confess judgment contained in a lease of office space in a building in Chicago; defendant filed a petition asking for vacation of the judgment with leave to defend; counter affidavits were filed by plaintiffs objecting to the motion and petition; defendant moved to strike plaintiffs' counter affidavits, which motion was overruled, and defendant's motion to vacate the judgment was denied.

Plaintiffs' statement of claim alleged the execution, by plaintiffs as lessors and the defendant as lessee, of a lease for a term of two years beginning May 1, 1932, in which defendant agreed to pay rental in monthly installments on the first day of each calendar month; that there was a rent balance due for months of May, 1932, to and including April, 1933, amounting to \$211.16, still in arrears, together with attorney's fees payable for in the lease.

Defendant in his petition to vacate admitted the execution of the lease and that he entered into and occupied the premises, paying rent; he also had monthly payments for rent, including notified the plaintiff at the building that he would no longer continue to occupy the premises, and that on approximately the same date defendant paid and acknowledged the payment, stating that the defendant is no way or means due any part of consideration at all; however, this did not prevent a judgment for \$2000.00.

only an offer to surrender and no acceptance by the lessor. A lease can only be surrendered by mutual consent of lessor and lessee.

Johnson v. Northern Trust Co., 265 Ill. 263; Alschuler v. Schiff, 164 Ill. 298.

Defendant says that it was improper for the court to consider counter affidavits upon his petition to vacate a judgment by confession. The Municipal court rules (published 1933, Rule 137, page 128) not only provide for the filing by plaintiff of his objections to defendant's motion to vacate, but also that defendant shall file his reply to the plaintiff's objections. The issues thus made up shall be heard and decided promptly by the judge assigned for this purpose. The record before us shows that defendant filed no reply to plaintiff's objections but moved to strike them. This motion was in the nature of a demurrer, which admitted all the allegations of fact in plaintiff's counter affidavit or objections which were well pleaded. In the objections filed by plaintiff's the assertion of any surrender of the premises by defendant is directly controverted. Plaintiff's alleged that defendant, with other attorneys associated with him, continued to occupy the leased premises to April 30, 1934, and paid rent up to and including March, 1934.

The lease purports to be signed by -

James C. O'Brien, Jr.

(Seal)
Lessee

Lessors (Cyrus H. McCormick (Seal)
(Harold F. McCormick (Seal) as Trustees
(Stanley McCormick (Seal)
By Judson F. Stone
Agent

Defendant says that there is no instrument in writing authorizing Judson F. Stone as agent to execute the lease on behalf of plaintiffs. Plaintiff's statement of objections states that as trustees they were the owners of the building described in the lease as 30 North LaSalle Building by a deed in trust dated April 7, 1900, and recorded the same day in the Recorder's office of Cook county; that by said deed in trust conveyance of the title, leasehold interest, estate and premises, was made to the plaintiffs as trustees, for the use and benefit of themselves as beneficiaries; that by the

Johnson v. Johnson, 308 Ill. 303; Johnson v. Johnson, 308 Ill. 303.

[illegible]

(1981) James O. Gillingham, Jr.
The above reports to be signed by -

()
 ()
 ()

[illegible]

seventh paragraph of said deed in trust it was provided that the trustees may appoint such officers, attorneys, clerks and other agents as they may deem proper for their assistance in and about the execution of the trust created by this deed; that under this authority the trustees long prior to the execution of the lease involved appointed and authorized Judson F. Stone to be their agent, and that he was on the date of the execution of the lease agent of the trustees in the execution of the lease; that defendant executed the lease with actual notice that plaintiffs were acting as trustees, by Judson F. Stone as agent, and entered into possession and paid for part of the time the stipulated rent under the lease, and having accepted the benefits of the lease defendant is estopped to question the authority of Stone to act as agent.

Attached to this is an affidavit by Judson F. Stone, dated August 29, 1934, in which he states that he has been acting as agent for the trustees, pursuant to the provisions of the deed in trust, for a period of upward of fifteen years.

Defendant is an attorney at law, competent and experienced. It will be presumed that when he accepted the lease signed by Judson F. Stone as agent, he had satisfied himself of the authority of Stone.

Sigmund v. Newspaper Co., 82 Ill. App. 178, is not in point, as there the lessors refused to perform their covenants and there was nothing in either the declaration or the testimony showing that the agents were authorized to execute the lease. In Newman v. Powell, 127 Ill. App. 114, the court held that as the lessee had signed the lease it became his deed and he was estopped to deny the authority of the agent to sign for the lessor. In Cook v. Curry, 192 Ill. App. 182, it was held that to comply with the statute of frauds it is not necessary that the lease be signed by both landlord and tenant; that if the tenant signs he is bound thereby. To the same effect is Ullsperger v. Meyer, 217 Ill. 262. The statute of frauds has no application to an executed contract, and so far as

...of this deed is that it was provided that the
...and other
...in and about the
...of the deed stated by this deed; that there was nothing
the trustees long prior to the execution of the lease involved ap-
pointed and authorized James F. Stone to be their agent, and that
he was on the date of the execution of the lease agent of the trust-
tees in the execution of the lease; that defendant executed the lease
with actual notice that the trustees were acting as trustees, by James
F. Stone as agent, and entered into possession and paid for part of
the time the plaintiff was under the lease, and having accepted the
benefits of the lease defendant is estopped to question the authority
of Stone to act as agent.

Admitted to this is an affidavit by James F. Stone, dated
August 22, 1934, in which he states that he has been acting as agent
for the trustees, pursuant to the provisions of the deed in trust,
for a period of upward of fifteen years.
Defendant is an attorney at law, competent and experienced.
It will be presumed that when he accepted the lease signed by James
F. Stone as agent, he had satisfied himself of the authority of Stone.
Shawmut v. Lawrence Co., 24 Ill. App. 176, is not in point.

as there are lessees refused to perform their covenants and there
was nothing in either the declaration or the vesting agreement that
the agents were authorized to execute the lease. In Barnes v. Powell,
127 Ill. App. 114, the court held that as the lessee had signed
the lease it became his deed and he was estopped to deny the
authority of the agent to sign for the lessor. In Good v. Quinn,
123 Ill. App. 182, it was held that to comply with the statute of
Illinois it is not necessary that the lease be signed by both land-
lord and tenant; that if the tenant signs he is bound thereby. To
the same effect is Ullrich v. Meyer, 213 Ill. 282. The doctrine
of Shawmut v. Lawrence Co. is an established principle, and as far as

agents as they may deem proper for their assistance in and about the execution of the trust created by this deed; that under this authority the trustees long prior to the execution of the lease involved appointed and authorized Judson F. Stone to be their agent, and that he was on the date of the execution of the lease agent of the trustees in the execution of the lease; that defendant executed the lease with actual notice that plaintiffs were acting as trustees, by Judson F. Stone as agent, and entered into possession and paid for part of the time the stipulated rent under the lease, and having accepted the benefits of the lease defendant is estopped to question the authority of Stone to act as agent.

Attached to this is an affidavit of Judson F. Stone, dated August 29, 1934, in which he states that he has been acting as agent for the trustees, pursuant to the provisions of the deed in trust, for a period of upward of fifteen years.

Defendant is an attorney at law, competent and experienced. It will be presumed that when he accepted the lease signed by Judson F. Stone as agent, he had satisfied himself of the authority of Stone.

Sigmund v. Newspaper Co., 82 Ill. App. 173, is not in point, as there the lessors refused to perform their covenants and there was nothing in either the declaration or the testimony showing that the agents were authorized to execute the lease. In Rowman v. Foxell, 127 Ill. App. 114, the court held that as the lessee had signed the lease it became his deed and he was estopped to deny the authority of the agent to sign for the lessor. In Cook v. Curry, 192 Ill. App. 123, it was held that to comply with the statute of frauds it is not necessary that the lease be signed by both landlord and tenant; that if the tenant signs he is bound thereby. To the same effect is Ellenberger v. Meyer, 117 Ill. 264. The statute of frauds has no application to an executed contract, and so far as

by reason of mental or physical infirmity," the trust shall not fail, lapse or determine, but the remaining trustees shall continue to discharge all the duties, power and discretion imposed by the deed in trust as if the remaining trustees were the only ones nominated herein. Pursuant to these provisions, after the appointment of conservators for the estate of Stanley McCormick, Cyrus H. McCormick and Harold F. McCormick, as trustees, continued to discharge all the duties and powers entrusted and imposed by the deed in trust.

The legal estate of a trustee has the same properties, characteristics and incidents as if the trustee were the absolute, beneficial owner, and he may so deal with it provided the deed in trust so authorizes. Agrements' Loan & Tr. Co. v. Patterson, 308 Ill. 519; Illinois Conference v. Flagg, 177 Ill. 431.

By the fourth paragraph of the deed in trust it is specifically provided that the trustees shall have as full and absolute control of the trust estate, with the right to dispose of the same, as if they were the absolute owners thereof, including the power to lease, with such powers and rights to control the estate as are possessed and enjoyed by the absolute owners of similar property.

Final considerations against defendant's claim are the established axioms that in an action for rent the tenant cannot dispute his landlord's title; that a judgment at law is neither void nor voidable merely because the plaintiff is a lunatic, Speck v. Pullman Palace Car Co., 121 Ill. 33; that a surrender must be by mutual agreement; and that a petition to vacate a judgment is taken most strongly against the pleader and any doubts must be resolved against him. Stellwagen v. Schmidt, 234 Ill. App. 325.

We fail to find that defendant sets up a meritorious defense. The attempt to avoid his obligations under the lease is based merely on technical grounds, which cannot avail him. We find no persuasive reason to disagree with the trial court, and the order denying the motion to vacate the judgment is affirmed.

AFFIRMED.

Matchett and O'Connor, JJ., concur.

38276

ERNST A. WEICHERDT,
Appellee,

vs.

WILLIAM SCHLATTER et al.,
Defendants.

On Appeal of EVA FISCHER,
Appellant,

vs.

ERNST A. WEICHERDT and
WILLIAM SCHLATTER,
Appellees.

37
APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 628¹

MR. PRESIDING JUSTICE MACMURLY
DELIVERED THE OPINION OF THE COURT.

Plaintiff filed his bill to foreclose the lien of a trust deed, asserting that it was a first lien upon the premises. Defendant Eva Fischer filed an answer denying this; she also filed a cross bill, alleging that a subordination agreement signed by her, subordinating the lien of a trust deed held by her to that held by plaintiff, was procured from her by fraud and was therefore invalid, and she asked that her trust deed be declared first and prior to all others. The cause was referred to a master, who held that plaintiff had a first lien upon the premises; that the subordination agreement executed by the defendant was good and valid. The report was approved by the chancellor and a decree accordingly entered, and the defendant and cross-complainant, Eva Fischer, appeals.

The facts support the propriety of the decree. In the fall of 1923 Algot Nelson and Gust Elster and their wives owned the premises in question and erected thereon a building which was financed with the proceeds of a first mortgage loan of \$8000 from the Citizens State Bank of Chicago. In February, 1925, they conveyed the property to Louis Fischer and Eva, his wife, as joint

Page 1

THE STATE OF NEW YORK
IN SENATE

January 1, 1902

REPORT
OF THE

COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

1901

ALBANY:
J.B. KNEELAND, PRINTER.
1902.

THE STATE OF NEW YORK

IN SENATE

1901

REPORT
OF THE
COMMISSIONERS OF THE LAND OFFICE

The report of the Commissioners of the Land Office for the year 1901, is a document of considerable importance, and one which should be read by all who are interested in the affairs of the State. It contains a full and complete statement of the condition of the public lands, and of the progress of the work of the Land Office during the year. The report is divided into two parts, the first of which contains a general statement of the condition of the public lands, and the second of which contains a detailed statement of the work of the Land Office during the year. The first part of the report is a general statement of the condition of the public lands, and is divided into three sections, the first of which is a statement of the condition of the public lands at the beginning of the year, the second of which is a statement of the condition of the public lands at the end of the year, and the third of which is a statement of the changes in the condition of the public lands during the year. The second part of the report is a detailed statement of the work of the Land Office during the year, and is divided into four sections, the first of which is a statement of the work of the Land Office in the purchase of land, the second of which is a statement of the work of the Land Office in the sale of land, the third of which is a statement of the work of the Land Office in the management of the public lands, and the fourth of which is a statement of the work of the Land Office in the improvement of the public lands.

The report of the Commissioners of the Land Office for the year 1901, is a document of considerable importance, and one which should be read by all who are interested in the affairs of the State. It contains a full and complete statement of the condition of the public lands, and of the progress of the work of the Land Office during the year. The report is divided into two parts, the first of which contains a general statement of the condition of the public lands, and the second of which contains a detailed statement of the work of the Land Office during the year. The first part of the report is a general statement of the condition of the public lands, and is divided into three sections, the first of which is a statement of the condition of the public lands at the beginning of the year, the second of which is a statement of the condition of the public lands at the end of the year, and the third of which is a statement of the changes in the condition of the public lands during the year. The second part of the report is a detailed statement of the work of the Land Office during the year, and is divided into four sections, the first of which is a statement of the work of the Land Office in the purchase of land, the second of which is a statement of the work of the Land Office in the sale of land, the third of which is a statement of the work of the Land Office in the management of the public lands, and the fourth of which is a statement of the work of the Land Office in the improvement of the public lands.

tenants, subject to the \$6500 mortgage which the Lischeks assumed and agreed to pay. October, 1925, the Lischeks conveyed to Joseph and Anna Szabo, subject to the first mortgage, taking back as part purchase money a junior mortgage for \$6100. Louis Lischek died in 1926 and Eva Lischek became the owner of the junior mortgage. April, 1927, the Szabos sold the property to William and Mary Schlatter, subject to the two mortgages.

In August, 1928, in anticipation of the maturity of the balance of \$6500 remaining unpaid on the first mortgage, William Schlatter applied in writing to the Irving National Mortgage Company for a refinancing loan of \$5000. The application provided that he would execute first mortgage notes and trust deed as security for the loan and authorized the mortgage company to pay out of the proceeds of the loan the balance due the Citizens State Bank. This application was accepted by the mortgage company and shortly thereafter Schlatter and his wife delivered to the mortgage company a note for \$5500, secured by a trust deed on the premises. Application was then made to the Chicago Title & Trust Company for a mortgage guarantee policy. Schlatter, at the request of the manager of the Irving National Mortgage Company, called on Mrs. Lischek with a formal subordination agreement, subordinating the lien of her junior mortgage to the lien of the new first mortgage.

Defendant Lischek argues that misrepresentations were made to her which induced her to sign this paper; that she was old and illiterate and could not read English. She and Schlatter conversed in German. Schlatter himself was not a business man, was inexperienced in real estate matters; had been a cook and then in the restaurant business; this was the first property he had ever bought. Schlatter testified that he did not know much about the subordination agreement; that he told Mrs. Lischek he was going to

1946 and the Bishop became the owner of the Bishop's Palace.

[illegible]

REPRODUCTION OF THIS DOCUMENT IS PROHIBITED

... In August, 1938, in violation of the neutrality of the
... at 1938 according to the law of the United States, which
... in violation of the law of the United States, which

that he would remain in the country and that he would not leave the country.

...the
... ..
... ..
... ..
... ..
... ..
... ..
... ..

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is a legitimate organization or a subversive one.

transfer his first mortgage from the Citizens State Bank to the Irving National Mortgage Company and that she should sign the paper "for renewal." Mrs. Zischek says that Schlatter told her that the paper "keeps my mortgage on the property." Mrs. Zischek signed the subordination agreement and at the same time delivered her mortgage note and trust deed to Mr. Schlatter. These were presented to an examiner in the guarantee department of the Chicago Title & Trust Company, which had the agreement recorded, and the junior mortgage note and trust deed belonging to Mrs. Zischek were each of them stamped with a legend to the effect that this lien was subordinated to the lien of the new first mortgage trust deed. These junior mortgage papers were then returned by Mr. Schlatter to Mrs. Zischek.

In December, 1928, the Irving National Mortgage Company paid out the proceeds of the loan to the Citizens State Bank and the notes and trust deed evidencing the maturing first mortgage were cancelled and the trust deed released. Subsequently the new trust deed and notes were purchased by the plaintiff.

For about four years thereafter the Schlatters made monthly payments of principal and interest upon the junior mortgage to Mrs. Zischek. Almost four years after Mrs. Zischek signed the subordination agreement, in a conversation with Mrs. Schlatter she referred to her mortgage as a "second mortgage." Not until January, 1933, when she filed her answer to the original bill did she ever claim that she had been induced by fraud to sign the subordination agreement. From this evidence the master and chancellor could properly conclude that there was no fraud in procuring the subordination agreement and that it was valid.

— There is force in the suggestion by plaintiff's counsel that Mrs. Zischek benefitted by subordinating the lien of her junior mortgage to the new loan, in that she avoided the possibility

presented his first mortgage from the Wisconsin State Bank to the
 Irving National Mortgage Company and that the records show the paper
 "for record." Mr. Alston says that he believed that the paper
 paper "passed by mortgage to the company." Mr. Alston signed
 the subordination agreement out of the same time believed that
 mortgage note and deed had been in Mr. Alston's possession. There were two
 copies of an agreement in the Wisconsin Department of the State
 Title & Trust Company, which had the agreement recorded, and the
 Junior mortgage note and deed were believed to be in Alston's possession
 each of them stamped with a legend to the effect that this lien
 was subordinated to the first of the two first mortgage notes held.
 These Junior mortgage papers were then returned by Mr. Alston
 to Mr. Alston.

In December, 1935, the Irving National Mortgage Company
 paid out the proceeds of the loan to the Wisconsin State Bank and
 the notes and deed were returned to the company. The first mortgage
 was cancelled and the deed was returned. Subsequently the new
 first deed and notes were returned by the company.

For about four years thereafter the Alston's made payments
 payments of principal and interest upon the Junior mortgage to Mr.
 Alston. About four years after Mr. Alston signed the subordi-
 nation agreement, at a subordination of the first mortgage to the second
 to her mortgage as a "second mortgage." In early January, 1938,
 when the first mortgage was cancelled and the second mortgage was
 that she had been induced by fraud to sign the subordination agree-
 ment. From this evidence the writer and attorney would properly
 conclude that there was no fraud in executing the subordination
 agreement and that it was valid.

There is force in the suggestion by Alston's counsel
 that Mr. Alston should be relieved by subordination the lien of her
 Junior mortgage to the new loan, in that the writer and attorney

that her second mortgage might be wiped out by a foreclosure of the first mortgage held by the Citizens State Bank. She also escaped the possibility of personal liability under a deficiency decree in the event of a foreclosure of the old first mortgage. She and her husband had assumed to pay this when they acquired title. She received payments from the Schlatters totaling \$2300 on account of principal and interest upon her junior mortgage after she had signed the subordination agreement.

Moreover, it would be inequitable to throw the loss upon plaintiff, an innocent mortgagee who relied in good faith upon the subordination agreement which Mrs. Lischek now attempts to repudiate. See Barrair v. Fraub, 65 Ill. 170; Dickinson v. Dickinson, 365 Ill. 321; Hagen v. Van Berghout, 274 Ill. App. 339; Hezely v. Searl, 230 Ill. App. 393.

It also should be borne in mind that the Irving National Mortgage Company accepted Schlatter's written application for a loan conditioned upon its being a first mortgage note and trust deed. These conditions were fulfilled and by the subordination the rights of Eva Lischek as the holder of a junior mortgage were not changed. She occupied the same position after executing the agreement as she did before.

For the reasons above indicated the decree is affirmed.

AFFIRMED.

Matchett and O'Connor, JJ., concur.

The first mortgage was made by the defendant to the plaintiff on or about January 1, 1906, for the sum of \$10,000, and the second mortgage was made by the defendant to the plaintiff on or about January 1, 1907, for the sum of \$10,000.

1. Mr. J. Edgar Hoover, Director, Federal Bureau of Investigation, Washington, D.C.
 2. Mr. Clegg, Chief of Bureau of Investigation, Washington, D.C.
 3. Mr. Glavin, Chief of Bureau of Investigation, Washington, D.C.
 4. Mr. Ladd, Chief of Bureau of Investigation, Washington, D.C.
 5. Mr. Nichols, Chief of Bureau of Investigation, Washington, D.C.
 6. Mr. Rosen, Chief of Bureau of Investigation, Washington, D.C.
 7. Mr. Tracy, Chief of Bureau of Investigation, Washington, D.C.
 8. Mr. Carson, Chief of Bureau of Investigation, Washington, D.C.
 9. Mr. Egan, Chief of Bureau of Investigation, Washington, D.C.
 10. Mr. Gurnea, Chief of Bureau of Investigation, Washington, D.C.
 11. Mr. Hendon, Chief of Bureau of Investigation, Washington, D.C.
 12. Mr. Pennington, Chief of Bureau of Investigation, Washington, D.C.
 13. Mr. Quinn, Chief of Bureau of Investigation, Washington, D.C.
 14. Mr. Nease, Chief of Bureau of Investigation, Washington, D.C.
 15. Mr. Gandy, Chief of Bureau of Investigation, Washington, D.C.

[illegible]

...the ... of ... and ... of ...

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 399–406

38150 and 38151

CITY OF CHICAGO,
Defendant in Error,

vs.

JAMES BALANOFF,
Plaintiff in Error.

Consolidated with

CITY OF CHICAGO,
Defendant in Error,

vs.

GEORGE RICHLIFF,
Plaintiff in Error.

38

ERROR TO MUNICIPAL COURT
OF CHICAGO.

}

282 I.A. 628²

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

In these two cases the facts are similar and the causes were consolidated for hearing. In each case the defendant was found guilty of a violation of Section 4210 of the Chicago Revised Code of 1931, which provides for the punishment of any person who makes, or assists in making, an improper noise, disturbance, breach of the peace or diversion tending to such breach of the peace. Defendants (as the complaints aver) were seen by a policeman while in the act of violating the ordinance, were arrested and brought into court, where leave was given to file a complaint against them instantler. The record in each case shows that the court took jurisdiction of the person of the defendant and ordered the bailiff to take him into custody. The record also indicates that in each case the defendant waived trial by jury and that the court having heard the evidence found the defendant guilty and assessed a fine of \$200, entered judgment for the amount of the fine and costs and in default of payment committed the defendant to the House of Correction. These proceedings took place March 9, 1935.

March 14, 1935, a petition was presented to the court in behalf of each defendant by his attorney, Mart E. Haber. The

STATE OF NEW YORK

CITY OF NEW YORK,
County of New York,

ss.

JOHN J. HENRY,
Deputy Sheriff in and for
the County of New York,

do hereby certify that

CITY OF NEW YORK,
County of New York,

ss.

JOHN J. HENRY,
Deputy Sheriff in and for
the County of New York,

Handwritten signature

JOHN J. HENRY

Deputy Sheriff

888 A.I.S.S.

RE. JUDICIAL EVIDENCE RELATIVE TO THE CASE OF THE STATE.

It is shown that the State has shown and the State
were presented for hearing. In each case the testimony was taken
policy of a violation of Section 1104 of the Criminal Code
of 1901, which provides for the punishment of any person who
or assists in making, or otherwise makes, distribution, or
power or division thereof to any person or persons. The
(as the complaint was) was made by a complaint which is in the
admission and admission, were admitted and admitted this
where there was found in this a complaint against the defendant.
The record in each case shows that the State was authorized by
the person of the defendant and entered the bill in each case
into custody. The record also indicates that in each case the
Tribunal raised by law and that the State having found the
evidence found the defendant guilty and sentenced a fine of \$100.
relates (subject for the amount of the fine and costs and in each
of payment admitted the defendant of the State of New York.
These proceedings were held on June 5, 1902.
Under 14, 1902, a petition was presented in the year in
which at each instance by his attorney, said E. Henry. The

petition was verified and alleged that the petitioner had been retained to present the petition in defendant's behalf to the court. The petition stated that the petitioner interviewed the defendant in the House of Correction, was informed by him that when the cause was called for trial the defendant stated to the court that he was not ready for trial and demanded a trial by jury; that petitioner had been informed by the defendant and other persons who were in the company of the defendant at the time of the arrest that defendant was not causing or creating or taking part in or making, aiding, countenancing or assisting in making any lawless noise, riot, etc. tending to the breach of the peace, contrary to the ordinance; that he was informed that the facts which were the occasion for the arrest were that the defendant and about 12 or 14 of his friends and associates were gathered in a meeting in the coffee shop of one Christ Pedreff on the evening of March 2, 1934, and were discussing among themselves the political, social and economic conditions existing in Bulgaria and other nations of Europe commonly known as the Balkan States, from which countries the defendant and his associates had emigrated to this country; that in the course of the meeting the defendant listened to an address on the same subject given by one George Niskloff; that a stranger by the name of Jacob Medovich, who was not a member of the group composed of defendant and his associates and who had not been invited to the meeting, attempted forcibly and against the wishes of defendant and other persons present to intrude upon the meeting, acted in a belligerent and disorderly manner, talked in a loud, threatening tone of voice, and appeared to be intoxicated, and when requested to leave said Jacob Medovich encountered at the door of the coffee shop a negro lad by the name of Douglas Coley, who was about to enter to sell newspapers, and engaged in a scuffle with Coley, which attracted the attention of a police officer by the name of Elyan; that Medovich had a hammer or other similar weapon in his hand and either struck

The following is a list of the names of the persons who were present at the meeting held at the residence of the late Mrs. J. H. Smith, on the 10th of March, 1851, and were engaged in the discussion of the subject of the non-resistance of the colored people to the laws of the State of New York, which laws are in violation of the principles of the Declaration of Independence, and of the principles of the Constitution of the United States, and of the principles of the Christian religion.

or attempted to strike the police officer, was thereupon placed the defendants, Medovich, and all the other persons gathered in the coffee shop under arrest and took them to the police station, where they were booked and charged as heretofore related.

Each petition further states that the defendant is a native of Bulgaria and is not well versed in the English language and is unable to make himself understood without the aid of an interpreter; that he had no opportunity to procure the services of an interpreter at the trial and was unable to make the court understand that he desired a postponement for the purpose of obtaining a lawyer and making preparations for his defense, and that he desired a jury trial; and that because of this inability the court was unaware and was not fully informed of the desire of the defendant to obtain legal counsel and to obtain a postponement and to have a jury trial and of the actual facts constituting his alleged offense, and that by reason of the court not being fully advised and informed of these matters the finding of guilty was entered, whereas as a matter of fact the defendant was not guilty and would not have otherwise been found guilty if the court had been fully advised of the facts and circumstances.

The petitions having been filed, the court in each case immediately entered an order denying a hearing thereon. Each defendant gave notice of appeal and afterward sued out this writ of error. The briefs of defendants argue that the petition was sufficient under Section 21 of the Municipal Court act and cite People v. Long, 346 Ill. 646; People v. Ehler, 353 Ill. 393, and People v. Green, 388 Ill. 408, while the City contends, citing City of Chicago v. Williams, 254 Ill. 360, that the procedure after the defendants were brought into court was purely civil in character; that the petition discloses nothing to bring the cases within Section 21 of the Municipal Court act, and that the petition amounted to a collateral attack upon the

judgment. A proceeding of this kind is not purely civil in its nature. In Ull of Chicago v. Dickson, 321 Ill. App. 250, we reviewed the authorities and held such proceeding to be quasi-criminal in its nature.

In People v. Gardner, 279 Ill. App. 481, we indicated the proper method and procedure by which the sufficiency of such petition should be tested. In that case we said:

"The People contend that the petition states no facts sufficient to warrant the court in vacating the judgment under the motion. If the question were properly before us, the contention would have to be sustained, as there is an entire lack of facts alleged; but as we read the case of People v. Green, 305 Ill. 468, that question was not saved. It was there said (p. 475) that the proper method to test the sufficiency of a motion or petition under section 21 of the Municipal Court Act was to raise such question 'by demurrer, plea of nulla est accusatio, by motion to dismiss, by pleading special matters in confession and avoidance, or by making an issue of fact by traversing the allegations.'"

We also said in that case that whether the petition filed stated errors sufficient to justify setting aside the judgment was a question of law, and that if the State desired to present that question in this court it should have been saved by raising it in the trial court and securing a ruling thereon, and that since this procedure was not followed, the question of the sufficiency of the petition was not before us. It was therefore error for the court to summarily dismiss the petitions.

Defendants have not assigned error upon the records, and the City contends their failure to do so is fatal to their appeals. McCormick v. C. & M. L. Ry. Co., 318 Ill. 593, is cited. The necessity for the assignment of errors depends upon the rules of the court. The practice in the Supreme Court of the State in this respect has been modified since the case relied upon was decided. See Rules 34 and 39 of the Supreme Court, as amended at the June Term, 1935. The rules of this court do not require a technical assignment of errors as heretofore, the points argued in the brief being regarded as sufficient for that purpose.

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the South (CLPS) in the United States.

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

1. The above information was obtained from a review of the files of the Department of the Interior, Bureau of Land Management, and the Bureau of Reclamation, and is being furnished to you for your information.

to the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee. It is therefore requested that the Government of the United States provide the Commission with the necessary information as soon as possible.

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, for the year ending June 30, 1901:

For the error already indicated, the judgment of the trial court will be reversed and the cause remanded with directions that the finding of guilty be vacated and the defendant discharged.

REVERSED AND REMANDED WITH
DIRECTIONS.

McSurely, P. J., and O'Connor, J., concur.

the other side of the street, the house of the
 the other side of the street, the house of the
 the other side of the street, the house of the

the other side of the street, the house of the

the other side of the street, the house of the

the other side of the street, the house of the

the other side of the street, the house of the

38151

CITY OF CHICAGO,
Defendant in Error,

vs.

GEORGE NICHLOFF,
Plaintiff in Error.

39
ERROR TO MUNICIPAL COURT
OF CHICAGO.

282 I.A. 628³

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

The facts of record and the law applicable thereto in this case are controlled by an opinion this day filed in Cas. No. 38180, City of Chicago, Defendant in Error, vs. James Balanoff, Plaintiff in Error, and for the reasons expressed in that opinion, in this case also the judgment will be reversed and the cause remanded with directions, as in that opinion set forth.

REVERSED AND REMANDED WITH DIRECTIONS
THAT THE FINDING OF GUILTY BE VACATED
AND THE DEFENDANT DISCHARGED.

McSurely, P. J., and O'Connor, J., concur.

1928

THE BOARD OF DIRECTORS
OF THE COMPANY

RESOLVED, THAT THE
DIVIDEND BE PAID
AT THE RATE OF
FIVE PERCENT

1928 I.V. 628

THE BOARD OF DIRECTORS OF THE COMPANY

THE BOARD OF DIRECTORS OF THE COMPANY
HAS THIS DAY RESOLVED, THAT THE
DIVIDEND BE PAID AT THE RATE OF
FIVE PERCENT ON THE CAPITAL STOCK
OF THE COMPANY, AS PROVIDED FOR
IN THE CHARTERS AND BY-LAWS
HEREOF, AND THAT THE TREASURER
BE AND HE BE AUTHORIZED TO
PAY THE SAME TO THE HOLDERS
OF THE STOCK AS OF THE DATE
HEREOF.

WITNESSED AND SIGNED THIS
THIRTEENTH DAY OF MARCH
1928, AT NEW YORK, N.Y.

Respectfully,
J. J. and J. J. J.

38165

TIMOTHY O'CONNOR,
Appellee,

vs.

GLANS MORTGAGE COMPANY,
a Corporation,
Appellant.

4
OFFICE OF THE CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 628⁴

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

O'Conner brought suit against defendant, Glans Mortgage Co., a corporation, alleging the conversion by it of a promissory note for \$1000, with coupons attached representing interest which was due thereon. He averred his ownership and right to possession of the note and coupons and averred that defendant disposed of the same for its own use. There was a trial by the court with a finding and judgment for plaintiff in the sum of \$1070, which defendant seeks to reverse, urging that the judgment is not supported by the evidence; that plaintiff is estopped to claim conversion, and moreover that plaintiff has not been damaged.

There is little conflict in the evidence as to material facts. On April 1, 1928, Morris Grodsky and Hata, his wife, executed 24 notes in the aggregate amount of \$25,000, with coupons attached representing interest which would thereafter accrue thereon until maturity. The notes were to draw interest at the rate of six per cent per annum. At the same time, to secure the payment of the notes the makers executed and delivered a trust deed conveying to Louis D. Glans as trustee certain premises situated in the city of Chicago and known as No. 3913 to 3915 West Division street. The notes were payable in the order of the makers and by them endorsed.

Prior to maturity plaintiff purchased one of these notes which was for the sum of \$1000, with coupons attached, and this is the note upon which this litigation is based. Plaintiff paid \$1000 for it. November 18, 1931, default having been made in the pre-

visions of the trust deed, defendant through Helen Creech, one of its employees, filed a bill to foreclose. Sometime in December, 1931, Robert Glanz, in behalf of defendant, informed plaintiff that the interest on the loan was in default, and that it would be necessary to foreclose the mortgage. He asked plaintiff to bring in his note, stating that Mr. Goscowski would give him a receipt for it. The following day plaintiff brought the note to defendant's office and received from it, through Mr. Goscowski, a receipt which, describing the notes and coupons, stated the same were received "for foreclosure proceedings." January 6, 1932, the bill of Helen Creech was amended; she dismissed as to some defendants and made other persons parties defendant. A receiver for the premises was appointed and he accepted and entered on his duties March 2, 1932.

The cause was referred to a master, who filed his report February 29, 1932, finding the amounts due and recommending that a decree of foreclosure be entered. June 30, 1932, on motion of solicitors for plaintiff the receiver was discharged and the cause dismissed without costs to either party. On the hearing before the master the plaintiff, Helen Creech, produced all the unpaid notes and coupons and testified she was the owner of the same. It is conceded, however, that she was only an employee of defendant company, and in bringing the suit acted for defendant and as trustee for the noteholders of whom there were about fifteen.

The suit was dismissed pursuant to a plan of settlement between the owners of the notes and the owner of the equity. It was planned to reorganize the property. The Grodskys, holders of the equity, made and delivered a quit-claim deed of the premises to Helen Creech, and it was agreed that they might remain in possession of the premises for about eighteen months. Louis D. Glanz, as trustee, executed a release deed of the trust deed which secured

vision of the most exact, between the two sides, and as
the subject, that a bill is introduced, and is passed,
1931, Robert Smith, in behalf of defendant, introduced a bill
that the interest on the loan was in default, and that it would
be necessary to foreclose the mortgage. He said definitely to
that effect, stating that Mr. Smith would like to
proceed for it. The following day plaintiff brought the case to
defendant's office and presented (Feb. 11, 1931) Mr. Smith, a
rough sketch, enclosing the notes and coupons, stating the same
were received "from defendant's proceeds." January 2, 1931, the
bill of John Smith was received; and defendant as of that date
sent and made other various copies defendant. A receipt for the
proceeds was prepared and he received and signed on the same
March 7, 1931.

The same was referred to a master, who filed his report
February 20, 1931, stating the amount due and recommending that a
decree of foreclosure be entered. June 20, 1931, on motion of
defendant the plaintiff the property was foreclosed and the same
declared without right to of that party. On the finding before the
master the plaintiff, John Smith, produced the coupons and notes
and coupons and declared that was the amount of the same. It is
submitted, however, that the bill as signed by defendant was
good, and in bringing the suit asked for defendant and as interest
for the maintenance of same with about fifteen percent.

The bill was dismissed pursuant to a writ of certiorari de-
clared the amount of the notes was the amount of the equity. It was
dismissed to prevent the property. The findings, however, of the
court, and the bill introduced a bill-in-law that the proceeds be
John Smith, and it was stated that they should remain in possession
of the proceeds for about fifteen months, about 15 percent, of

the note held by plaintiff, and others. Helen Czech and Walter Czech, her husband, executed another trust deed to secure their notes for \$4000, which became a first lien on the premises, and pursuant to the plan they conveyed the premises to Louis D. Glanz as trustee. The notes, including those of plaintiff, were delivered up and cancelled, on the same day an instrument in writing creating what was known as the Humboldt Building Trust was executed by a number of the holders of the notes. The trust agreement, in substance, provided that the noteholders acquired the beneficial interest in and to the income, proceeds and avails of the trust property in proportion to their respective holdings, but that they should not acquire any title to the trust property, either legal or equitable, but only an interest in the net income. Certificates in the Humboldt Building Trust, "not incorporated," which were delivered to the noteholders, also provided that the owner of the certificate should have no claim or interest, legal or equitable, in the lands and other assets, but only an interest in the net income, proceeds and avails thereof, as provided in the instrument.

It appeared in clearing the title that a claim for mechanic's lien had been filed against it, and a settlement of that claim was made. The record does not disclose what disposition was made of the \$4000 secured by the first mortgage against the premises executed by the Czechs. Prior to the consummation of this reorganization, R. L. Glanz on January 1, 1932, wrote a letter to plaintiff, which is in evidence and which in substance reminded him that he was the holder of one of the principal notes signed by Gredsky and stated:

"A foreclosure was started on this property a few months ago, and has already been completed.

We are going to have a meeting of all the noteholders, to explain what was done in this case, and to decide what we should do with the property.

This meeting will be held at the office of the Glanz Mortgage Company on Thursday, July 7, 1932, at four o'clock. I hope you will be present at this time."

The note held by plaintiff, was signed, dated March and dated
March, but defendant, executed another note dated to secure said
note for \$1000, which became a first lien on the premises, and
payment to the said bank advanced the proceeds to Louis H. Green
as trustee. The said bank, including these of plaintiff, were delin-
quent and cancelled. On the same day an instrument in writing
reciting what was known as the cancelled building trust was executed
by a number of the holders of the notes. The intent of the same, in
substance, recited that the defendants had assigned the beneficial
interest in and to the income, proceeds and profits of the trust
property in question to their respective buildings, but that they
should not receive any title to the trust property, either legal
or equitable, but only an interest in the net income. Declaration
in the cancelled building trust, that incorporated, which were re-
livered to the defendants, also provided that the owner of the
building should have no claim or interest, legal or equitable,
in the funds and other assets, but only an interest in the net in-
come, proceeds and profits thereof, as recited in the instrument.
It appeared in closing the trial that a claim for defendant's
lien had been filed against it, and a declaration of such claim was
made. The record does not disclose what declaration was made of
the claim asserted by the first mortgage against the premises and
made by the Green. What is the consequence of this declaration
made by the Green on January 2, 1922, that a notice of assignment
which is so entitled and which is otherwise entitled as that it
was the holder of one of the premises notes signed by plaintiff and

signed

"A declaration was signed on this property a few months
ago, and has already been recorded.
It was signed by a number of all the defendants, to
assign their share in this case, and to declare that the amount of
this property.
This matter will be held in the office of the court at
Chicago on January 2, 1922, and a claim will be
presented on that day."

The uncontradicted evidence shows that plaintiff attended this meeting; that the trust agreement prepared for the signature of the noteholders was presented to him at that time. There is some conflict in the evidence as to what was said. The witnesses for defendant testified that he said in substance that he was in favor of the plan, but that he had not brought his glasses with him and did not wish to sign the agreement without examining it. The uncontradicted evidence shows that he did not sign on that day nor thereafter. Plaintiff testified that he said at this meeting that he did not agree to the plan and that as long as the notes were not going to be foreclosed he wanted his note back.

The evidence shows that on September 24, 1932, he handed to Mr. Glanz a written paper of that date addressed to defendant company in which he demanded the return of his note and interest coupons, which the notice stated had been surrendered "for the purpose of foreclosure, which said foreclosure proceeding was dismissed without any authority from me." The note was not delivered as demanded and this suit was filed thereafter.

Defendant says in substance that when plaintiff surrendered his note for the purpose of foreclosure it was the intention that it should be extinguished and with the knowledge that plaintiff would never be entitled to possess it again, and further says that in order to maintain a suit in trover it was necessary that plaintiff's right to possession should be absolute and not conditional. It cites cases such as Owens v. Weedman, 82 Ill. 409; Hattleston v. Kerr, 167 Ill. App. 74; Hidge v. Giffroy, 320 Ill. App. 590. The uncontradicted evidence is to the effect that the note was delivered to defendant upon the representation of defendant that plaintiff would have the benefit of a foreclosure. When the foreclosure proceeding was dismissed plaintiff was entitled to the return of his note upon demand. He later made the demand, and defendant

[illegible]

refused to deliver the note. In the meantime the trust deed which secured the note had been released without plaintiff's consent, and the note and coupons (without his consent) had been cancelled. This use of the note was not for the benefit of plaintiff but for the purposes of defendant. It was an unlawful use and amounted to a conversion. Hercules Powder Co. v. Rowan, 245 Ill. App. 594; Fritz v. Hochspeler Co., 237 Ill. 574.

In the next place defendant claims that by reason of conversations and conduct plaintiff is now estopped to assert that defendant converted the note and coupons. As already stated, the evidence shows that pursuant to notice from defendant, plaintiff met with other noteholders at the office of defendant July 7, 1932, and there is testimony for defendant to the effect that plaintiff at that time said he was in favor of the plan but did not have his glasses and did not wish to sign the trust agreement without looking it over. There is also evidence of other conversations (and witnesses for defendant testified) that plaintiff at these times spoke with approval of the steps which were being taken to perfect the plan. There is conflict in the evidence, however, as to what was said, but the fact that plaintiff refused to sign the reorganization agreement is of controlling importance in weighing the evidence. It is apparent that it was not his intention, nor the understanding of those with whom he talked, that he would be bound unless he signed the reorganization agreement. He did not accept the certificate, and he refused dividends offered to him by the managers of the property as reorganized.

Defendant argues estoppel by reason of his silence, but there is no basis for such contention in the evidence, and at any rate the finding of the court is against defendant on that issue. We would not be justified on this record in entering a finding contrary to that of the trial Judge who saw and heard the witnesses.

It is urged that the court erred in receiving in evidence a transcript of the testimony given by Helen Green before the master. We think it was admissible, but at any rate there was other evidence sufficient to sustain the findings, and the trial being by the court, the admission of this evidence, even if erroneous, would not be reversible error.

It is urged that there was no competent evidence of damages. The face of the note was prima facie the measure of plaintiff's damages. American Express Co. v. Parsons, 44 Ill. 312; Sentley, Murray Co. v. LaSalle St. Trust & Savings Bank, 197 Ill. App. 389; Simon v. Reilly, 321 Ill. 431. This prima facie showing was not overcome by other evidence.

We are satisfied that upon the whole record justice has prevailed, and for this and other reasons we stated the judgment is affirmed.

AFFIRMED.

McSurely, S. J., and O'Connor, J., concur.

38177

SAMUEL MARINO, doing business as
MARINO MACHINE SHOP,

Appellee,

vs.

I. J. GRASS NOODLE CO., a Corporation,
Appellant.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 629¹

MR. JUSTICE MACHETT DELIVERED THE OPINION OF THE COURT.

Plaintiff Marino operates a machine shop in the city of Chicago. Defendant is a corporation located at 6027 Westworth avenue where it manufactures needles and other alimentary paste products. August 22, 1934, plaintiff and defendant entered into a written contract whereby plaintiff agreed for the sum of \$1350 to furnish labor and material for the construction of three dry rooms, each of two of the rooms to be eleven feet six inches wide and eighteen feet six inches deep, the other room to be nine feet wide and eighteen feet six inches deep. The contract provided that the work should be in accordance with blue prints designed by plaintiff and submitted to defendant; that upon the signing of the parties defendant should pay to plaintiff one-third of the consideration, an additional one-third two weeks after date of the contract and the remainder within thirty days after the completion of the work. The contract was written on two pages of paper. The second page contained specifications which were prepared by defendant after consultation with its engineer. A blueprint labeled "Interior Side View" was attached to the contract.

This suit by plaintiff was filed November 13, 1934. It avers a contract to "construct" three dry rooms and to furnish all labor and material necessary in the construction. It avers performance by plaintiff and claims a balance of \$400 to be due under the terms of the contract and a further sum of \$213 for extras, making a total sum of \$613.

Defendant filed an affidavit of merits with counter-claim for the sum of \$1000. The affidavit admitted the execution of the contract and the construction of the rooms but alleged that the rooms as constructed did not fulfill warranties by plaintiff, in that needles would not dry properly therein; that while plaintiff warranted that the dry rooms would give an increased capacity of more than fifty per cent over the dry room theretofore used on the premises by defendant and would dry a total of 48 racks of needles at one time, needles did not dry in the rooms as constructed and defendant was able to dry needles in them only by materially reducing the number of racks and employing a man to shift or move the racks during the entire night when the drying was taking place; that by reason of the breach of these warranties defendant was in no better position than before the construction of the dry rooms, but on the contrary its condition was worse in that it is now necessary to employ practically the entire line of a man in shifting the racks of needles in order to obtain the same output as before.

Defendant also averred that in attempting to use these dry rooms approximately 2,000 pounds of needles of the value of \$200 were spoiled, and that defendant was entitled to recover this sum and also \$950 paid to plaintiff on the contract/^{and} made a counter-claim for the sum of \$1150.

There was a trial of the issues by the court. The court disallowed the items for extras as claimed by plaintiff and made a finding in favor of plaintiff in the sum of \$400, upon which judgment was entered.

Defendant urges that the judgment is contrary to the law and the evidence. The testimony discloses that plaintiff claimed to be the inventor of an improved room for the drying of needles and similar products, for which he made an application for patent.

Defendant was a manufacturer of needles and such products. Plaintiff had theretofore constructed one of these reams in connection with another plant known as the Vita Costa plant. Prior to ^{making} the contract upon which plaintiff sues, the treasurer of defendant, Mr. Grass, a man with about twenty-five years experience in the business, inspected this ream at the Vita Costa plant on two occasions. He was interested and requested his expert mechanic, Mr. Dixon, to examine the same, which Mr. Dixon did and thereafter in company with Mr. Grass observed the ream while the plant was in operation. Plaintiff was apparently enthusiastic about his invention, and Dixon says that at that time he made claims for it at which they laughed. Thereafter the written contract between plaintiff and defendant was executed. The contract contains no warranties such as defendant says it relied on, but on the trial defendant gave evidence of oral statements made by plaintiff prior to the time of the execution of the contract, which it now claims amounted to warranties and on which it says it relied. The court heard this oral evidence. At the close of the testimony plaintiff moved to strike out all the evidence "not relating to non-performance of the contract." The court took the motion under advisement, reserving a ruling. The record fails to show any express ruling on the motion thereafter, but the evidence was clearly inadmissible, and we think it is apparent that the court in making his findings disregarded it. The written contract was full and complete, and evidence of oral conversations contemporaneous therewith and prior thereto was clearly not admissible. Telluride Power Transmission Co. v. Crane Co., 208 Ill. 218; Armstrong Paint & Varnish Works v. Continental Can Co., 301 Ill. 102; Starling-Midland Coal Co. v. Great Lakes Coal & Coke Co., 334 Ill. 281. The evidence being inadmissible, it is of course unnecessary to discuss the question of preponderance.

Defendant further contends, however, that irrespective of any

express warranty there were implied warranties that the rooms would be reasonably suited for the purpose for which they were designed and sold, and in this connection defendant relies on section 15 of the Sales act (Cahill's Ill. Rev. Stats., 1933, chap. 101a, par. 15). Plaintiff urges the act is inapplicable because the contract here involved is a building contract, rather than one for the sale of personal property. The pleadings do not disclose an issue of this kind. Apparently that question is argued for the first time in this court. Indeed, the evidence does not present the facts necessary to a determination of the question of whether this was merely a contract to furnish work, labor and material, or a contract for the sale of personal property and therefore within the Sales act. However, even if we assume the contract to be one for the sale of personal property and that section 15 is applicable, defendant can not prevail.

The uncontradicted evidence shows that the rooms may be used to dry needles; in fact defendant is using them for that purpose. It also appears that defendant made a payment on the contract after the completion of the rooms. There is no evidence that the rooms were not constructed according to the terms of the contract and the plans and specifications attached to it. It is apparent all the parties knew that the construction of these rooms was more or less of the nature of an experiment. The court disallowed the claims for extras. Defendant certainly could not keep and use the rooms and at the same time recover under its counter-claim the money paid to plaintiff for the labor done and the material furnished in the construction of these rooms. Defendant's counter-claim is in substance for the return of money paid under the contract, and there is no basis in the evidence for a finding in its favor on that theory.

For the reasons indicated the judgment is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

36196

FLORENCE C. BULGER,
Complainant,

vs.

J. FRANCIS BULGER,
Defendant.

J. FRANCIS BULGER,
(Cross-Complainant) Appellant,

vs.

FLORENCE C. BULGER,
(Cross-Defendant) Appellee.

42
APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 629²

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

The record of this appeal concerns the marital and property rights of J. Francis Bulger and Florence C., his wife. They were married at Chicago January 23, 1909; no child was born of the marriage. She filed her bill in the Superior court of Cook county, charging that because of her husband's unkind treatment she was living separate and apart from him; she averred in her bill that at the time she married him she was possessed of a fortune of \$500,000, which he had dissipated, leaving her penniless; that he threatened to dispose of his property and also a membership in the Board of Trade of which he was the owner. She prayed a preliminary injunction, alimony and solicitor's fees pendantis litis and a decree for separate maintenance and general relief.

The injunction issued. Mr. Bulger answered denying the material averments of the bill and thereafter filed a cross bill alleging that Mrs. Bulger had been guilty of extreme and repeated cruelty. He prayed for a divorce and for general relief. She answered denying the material averments of the cross bill. The cause was put at issue. The chancellor heard the witnesses in open court and entered a decree on July 24, 1934.

The decree found the necessary jurisdictional facts; that

the equities as to both bill and cross bill were with the husband, dismissed the original bill for separate maintenance and granted the divorce as prayed in the cross bill. The decree adjudged that the husband should pay his wife \$8000 in full of alimony; that payment should be made in installments, which were made proportional to his income from time to time. It further decreed that he should refrain from dispossessing of his Board of Trade membership without the permission of the court and also provided that if the same was sold before the alimony had been paid in full, one-half of the proceeds of the sale should be applied upon any unpaid alimony. The finding on which this provision of the decree was based was recited to have been made by agreement.

Pursuant to other appropriate findings the decree directs that the husband pay to the wife \$750 for attorney's fees, this payment also to be made in installments. Also, the personal property theretofore used by the parties was decreed to be the property of the wife. She excepted to the entry of the decree and prayed an appeal, which was not perfected. July 31, 1934, the husband made a motion to vacate the decree, which was continued from time to time and on December 18, 1934, was denied.

February 8, 1935, pursuant to notice, Mrs. Bulger filed a petition praying for a rule on her husband to show cause for non-payment by him of the amount due for alimony and solicitor's fees. February 13th he answered denying that he had refused to comply with the decree but averring that he had been unable to obtain employment and that while he thought the decree unjust he was willing to comply with it as far as he was able. The matter was continued until February 16, 1935, at which time the court ordered that the cross complainant pay to complainant \$525 on alimony and \$250 on solicitor's fees, and that in default of such payment the Board of Trade membership should be sold within ten days, half of the

[illegible]

and on December 11, 1934, was denied.

[illegible]

proceeds to be turned over to Mrs. Bulger and applied in satisfaction of the amount due her under the decree. February 27th, to which time the matter was continued, an order was entered finding that cross complainant was not out of employment without fault on his part as required by the decree to excuse him from making payment, and that the Board of ^{Trade} Membership was pledged as security for the performance of the decree and ordering it to be sold, one-half of the proceeds to be applied on the decree. From this order, the order of February 16th, the order of December 18th, and from the parts of the decree ordering the payment of attorney and solicitor's fees and the awarding of the personal property to Mrs. Bulger, cross complainant has appealed.

After the appeal was perfected, March 11, 1935, Mrs. Bulger filed a petition for attorney and attorney's fees pending the appeal. Cross complainant answered in substance that he was without funds, and that Mrs. Bulger was possessed of funds sufficient to sustain her without contribution from him. March 16th the court heard the petition and decreed that within ten days cross complainant should pay to her on account of solicitor's fees to defend the appeal \$350. On the same day it ordered that an attachment issue for the body of cross complainant. It is quite apparent that if he can avoid it, cross complainant does not intend to comply with the orders of the court.

The record discloses no certificate of evidence. It is contended in behalf of Mrs. Bulger that the provisions of the Civil Practice act are applicable. Section 64, para. 5 of that act (Ill. State Bar Stats. 1935, chap. 110) provides, "No special findings of fact or certificate of evidence shall be necessary in any case in equity to support the decree."

This section seems to change radically the practice in chancery as it heretofore existed in this State, the rule hitherto being that

presented to be turned over to Mr. Tolson and would be retained
 copy of the document has been under the control of the
 when this was made and retained, an order was entered stating
 that upon completion was not at all employment without being
 his name as required by the terms of the order of the court.
 copy, and that the Court of Appeals was divided on whether
 for the performance of the duties was ordered it to be said, was
 part of the document to be applied to the order. From this order,
 the order of February 1938, the order of December 1938, and from
 the order of the court ordering the payment of attorney and wife
 after's fees and the payment of the attorney's costs to her.

After the appeal was perfected, dated 11, 1938, Mr. Tolson
 filed a petition for attorney and attorney's fees pending the appeal.
 These complaints occurred in substance that he was without funds,
 and that Mrs. Tolson was possessed of funds sufficient to maintain
 her without contribution from him. After this the court heard the
 petition and found that within ten days after completion of the
 way to her on account of collector's fees he failed to appear.
 Mrs. Tolson was then ordered to pay the attorney's fees.
 The body of these complaints. It is quite apparent that it is
 not until it, these complaints have not failed to comply with the
 terms of the court.

The court then made no contribution to evidence. It is con-
 sidered in behalf of Mrs. Tolson that the provisions of the Civil
 Practice and Procedure Act, Section 86, para. 2 of that act
 (1938) apply to this case. This, however, the court found
 that it was not sufficient of evidence shall be necessary in any
 case in order to require the hearing.
 This section seems to change radically the position in evidence as
 it previously existed in this state, the rule being that

except in cases tried by a jury, the party desiring to sustain the decree was required either to preserve the evidence by certificate or to recite in the decree the necessary ultimate facts tending to sustain it. French v. French, 302 Ill. 122. It has been held that paragraph 3 of section 64 of the Civil Practice act requires that upon review the same presumption should be indulged in favor of the decree in chancery as of a judgment at law. Rick v. Rick, 277 Ill. App. 329; First Nat'l Bank v. 10 W. Elm St., 277 Ill. App. 337. Section 94 of that act (Ill. State Bar Stats. 1935, chap. 110) which recals the act in relation to practice and procedure in courts of record approved June 3, 1907, and all other acts inconsistent with the Civil Practice Act, provides:

"Nothing in this provision for repeal shall impair or affect any action or proceeding commenced before this Act shall have taken effect.

The provisions of this Act shall take effect January 1, 1934."

Rule 1 adopted by the Supreme court and effective January 1, 1934, (Ill. State Bar Stats. 1935, chap. 110) provides:

"All provisions of the Civil Practice Act with respect to review in civil proceedings by the Supreme or Appellate Courts shall apply to orders, determinations, decisions, judgments or decrees entered by trial courts, on or after January 1, 1934. All suits in which a summons has been issued prior to January 1, 1934, but in which no pleadings have been filed by either party prior thereto, shall be governed by the Civil Practice Act. The provisions of the Civil Practice Act with respect to service of process issued on or after January 1, 1934, (sections 6, 10, 13-19), appearance (section 20), and trial practice (sections 48-73), shall apply to proceedings instituted prior to January 1, 1934, and not on trial prior to that day. Except as provided by this rule, or by written stipulation of parties, or by order of the court, upon notice and motion, proceedings instituted prior to January 1, 1934, shall not be governed by the Civil Practice Act."

The record shows that the summons in this case was issued and both bill and cross bill filed prior to January 1, 1934, and it is argued in behalf of cross complainant that in the absence of a stipulation of the parties or an order of the court to the contrary, the Civil Practice act is not applicable. That part of the rule above italicized is plain and unambiguous and precludes the

[illegible]

1. The following information was obtained from the review of the records of the Civil Liberties Committee of the Senate Judiciary Committee, and is being furnished to you for your information:

[illegible]

Document 22 of 1935-36 (1935-36) (1935-36) (1935-36)

which require the use of a special and expensive

Abstract: The purpose of this study was to determine the effect of a 12-week, low-intensity, resistance training program on the muscle strength and endurance of older adults. The study was conducted in a laboratory setting. The participants were 12 older adults (mean age = 72.5 years, range 65-80 years) who were recruited from a local senior center. They were randomly assigned to either a control group or an exercise group. The control group received no intervention, while the exercise group participated in a 12-week, low-intensity, resistance training program. The program consisted of three sessions per week, each lasting 30 minutes. The exercises included leg press, leg extension, and seated row. The intensity of the exercises was set at 50% of the participants' one-repetition maximum (1RM). The participants were instructed to perform 10 repetitions of each exercise. The study was approved by the Institutional Review Board of the University of North Carolina at Charlotte. The results of the study showed that the exercise group had significantly greater muscle strength and endurance than the control group at the end of the 12-week program. The findings suggest that a low-intensity, resistance training program can be beneficial for older adults.

[illegible]

1. I am not a member of the Communist Party.

1933

1101 1 volume 1810 The Rev. James Mearns and the Rev. John I. Smith

1111, 1112, 1113, 1114, 1115, 1116, 1117, 1118, 1119, 1120, 1121, 1122, 1123, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1133, 1134, 1135, 1136, 1137, 1138, 1139, 1140, 1141, 1142, 1143, 1144, 1145, 1146, 1147, 1148, 1149, 1150, 1151, 1152, 1153, 1154, 1155, 1156, 1157, 1158, 1159, 1160, 1161, 1162, 1163, 1164, 1165, 1166, 1167, 1168, 1169, 1170, 1171, 1172, 1173, 1174, 1175, 1176, 1177, 1178, 1179, 1180, 1181, 1182, 1183, 1184, 1185, 1186, 1187, 1188, 1189, 1190, 1191, 1192, 1193, 1194, 1195, 1196, 1197, 1198, 1199, 1200, 1201, 1202, 1203, 1204, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214, 1215, 1216, 1217, 1218, 1219, 1220, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1228, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1236, 1237, 1238, 1239, 1240, 1241, 1242, 1243, 1244, 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1255, 1256, 1257, 1258, 1259, 1260, 1261, 1262, 1263, 1264, 1265, 1266, 1267, 1268, 1269, 1270, 1271, 1272, 1273, 1274, 1275, 1276, 1277, 1278, 1279, 1280, 1281, 1282, 1283, 1284, 1285, 1286, 1287, 1288, 1289, 1290, 1291, 1292, 1293, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1316, 1317, 1318, 1319, 1320, 1321, 1322, 1323, 1324, 1325, 1326, 1327, 1328, 1329, 1330, 1331, 1332, 1333, 1334, 1335, 1336, 1337, 1338, 1339, 1340, 1341, 1342, 1343, 1344, 1345, 1346, 1347, 1348, 1349, 1350, 1351, 1352, 1353, 1354, 1355, 1356, 1357, 1358, 1359, 1360, 1361, 1362, 1363, 1364, 1365, 1366, 1367, 1368, 1369, 1370, 1371, 1372, 1373, 1374, 1375, 1376, 1377, 1378, 1379, 1380, 1381, 1382, 1383, 1384, 1385, 1386, 1387, 1388, 1389, 1390, 1391, 1392, 1393, 1394, 1395, 1396, 1397, 1398, 1399, 1400, 1401, 1402, 1403, 1404, 1405, 1406, 1407, 1408, 1409, 1410, 1411, 1412, 1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420, 1421, 1422, 1423, 1424, 1425, 1426, 1427, 1428, 1429, 1430, 1431, 1432, 1433, 1434, 1435, 1436, 1437, 1438, 1439, 1440, 1441, 1442, 1443, 1444, 1445, 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456, 1457, 1458, 1459, 1460, 1461, 1462, 1463, 1464, 1465, 1466, 1467, 1468, 1469, 1470, 1471, 1472, 1473, 1474, 1475, 1476, 1477, 1478, 1479, 1480, 1481, 1482, 1483, 1484, 1485, 1486, 1487, 1488, 1489, 1490, 1491, 1492, 1493, 1494, 1495, 1496, 1497, 1498, 1499, 1500, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513, 1514, 1515, 1516, 1517, 1518, 1519, 1520, 1521, 1522, 1523, 1524, 1525, 1526, 1527, 1528, 1529, 1530, 1531, 1532, 1533, 1534, 1535, 1536, 1537, 1538, 1539, 1540, 1541, 1542, 1543, 1544, 1545, 1546, 1547, 1548, 1549, 1550, 1551, 1552, 1553, 1554, 1555, 1556, 1557, 1558, 1559, 1560, 1561, 1562, 1563, 1564, 1565, 1566, 1567, 1568, 1569, 1570, 1571, 1572, 1573, 1574, 1575, 1576, 1577, 1578, 1579, 1580, 1581, 1582, 1583, 1584, 1585, 1586, 1587, 1588, 1589, 1590, 1591, 1592, 1593, 1594, 1595, 1596, 1597, 1598, 1599, 1600, 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617, 1618, 1619, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1627, 1628, 1629, 1630, 1631, 1632, 1633, 1634, 1635, 1636, 1637, 1638, 1639, 1640, 1641, 1642, 1643, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, 1655, 1656, 1657, 1658, 1659, 1660, 1661, 1662, 1663, 1664, 1665, 1666, 1667, 1668, 1669, 1670, 1671, 1672, 1673, 1674, 1675, 1676, 1677, 1678, 1679, 1680, 1681, 1682, 1683, 1684, 1685, 1686, 1687, 1688, 1689, 1690, 1691, 1692, 1693, 1694, 1695, 1696, 1697, 1698, 1699, 1700, 1701, 1702, 1703, 1704, 1705, 1706, 1707, 1708, 1709, 1710, 1711, 1712, 1713, 1714, 1715, 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781, 1782, 1783, 1784, 1785, 1786, 1787, 1788, 1789, 1790, 1791, 1792, 17

*All variations of the Wild Duck are reviewed.

1. The first of these is the fact that the United States has a large and growing population of people who are of Mexican descent. This population is concentrated in the southwestern United States, particularly in California, Arizona, and New Mexico. It is estimated that there are over 10 million people of Mexican descent in the United States, and this number is expected to increase significantly in the future.

The records show that the evidence in this case was taken

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

To receive all of your important reports to time and in one place

A copy of the report is being furnished to the Bureau of the Census for their information.

100-443887-100

and relative low temperatures (α for $1 \leq \alpha \leq 100$) and β for $100 \leq \alpha \leq 1000$).

construction for which defendant contends. This portion of the rule is omitted from the same as it is printed in defendant's brief. It appears from the record that the trial of the cause did not begin until ^{after} January 1, 1934; the decree was entered July 24, 1934. We hold that under the plain provisions of the rule the Civil Practice act is applicable. The validity of the rule itself is not questioned by the briefs. It appears therefore that the duty to preserve the evidence was on cross complainant who attacks the decrees and orders of the court.

It is urged, in the first place, that where, as here, a divorce is granted to a husband because of the fault of the wife, she will not be entitled to alimony, and it seems to be urged that this is a general and universal rule. The true rule, as will appear from an examination of the cases, would seem to be that the court may in such cases grant or withhold alimony according to the equities of the case. This is settled by a long line of authorities beginning with Reavin v. Reavin, 3 Ill. (12 Ann.) 342, and ending with Boylan v. Boylan, 349 Ill. 471.

It is next urged, on the authority of Reuman v. Reuman, 69 Ill. 167, and Alkemp v. Alkemp, 276 Ill. 94, that the court erred in awarding \$750 to complainant for her solicitor's fees after the finding by the court that the wife was in fault. It was held in Reuman v. Reuman to be error for the court to award solicitor's fees to a wife after the termination of a suit which resulted adversely to her. The opinion in that case was filed at the September term of the Supreme court, 1873. Section 15 of the present divorce act (Ill. State Bar Stats. 1933, chap. 40) as amended by the laws of 1930, provides in substance that the court may reserve the question of attorney's fees and suit money until the final hearing of the case and then make such order as may seem equitable regardless of the disposition of the case. In the Alkemp case it

was held an abuse of discretion to make an order for solicitor's fees in favor of the wife where the judgment was against her and she was much more able than her husband to pay the fees. Here the evidence on this issue was not preserved, and under the Civil Practice Act if cross complainant wished to attack the decree in that respect he should have preserved it.

The further contention is made that the original bill of complaint having been dismissed, there was nothing before the court except the cross bill with the answer thereto, and since the cross bill prayed no relief with respect to cross complainant's share of Trade membership, that part of the decree was erroneous, in that it was not responsive to the pleading and was in fact inconsistent with it. Cases such as Lewis v. Lewis, 316 Ill. 447, and Waialer v. Geisler, 336 Ill. 418, are cited. The original bill in this case contains allegations at length as to the financial conditions of cross complainant and the financial relations of the parties. Its averments are rather complete as to their respective property interests, including the membership of cross complainant in the Board of Trade. The original bill prayed not only the specific relief of separate maintenance but general relief, as well. These averments of the original bill were controverted by the answer of the husband. These prior proceedings are also set up in his cross bill which specifically prayed not only for a divorce but also for general relief. Although the decree dismissed the original bill, it is apparent that it is based upon the pleadings as a whole, including the original bill and cross bill and the answers thereto. We think the decree is responsive to the pleadings as a whole, and this is sufficient. Higart v. Blank, 109 Ill. App. 48. Moreover, it must not be overlooked that this provision of the decree was closely connected with the matter of the allowance of alimony, concerning which it has been held in some cases that such allowance is a mere

[illegible]

17. There was no further information received from the source on the subject of the above mentioned matter.

The original bill is this: "The
 Senate shall have the right to
 confirm or reject any nomination
 of the President to any office
 in the United States, and the
 President shall have the right
 to nominate and appoint to any
 office in the United States
 any person who is a citizen
 of the United States, and who
 is qualified by education and
 experience to perform the
 duties of the office."

a suit to incident to silverware, and that the strict rule as to the necessity of pleading is not applicable where only personal property is involved. Doyle v. Doyle, 266 Ill. 63. Furthermore, the decree so far as it disposed of the membership in the Board of Trade, and, indeed, in some other provisions with reference to alimony, seems to have been a consent decree, of which, in the absence of fraud, the parties ought to be estopped from complaining. Buck v. Buck, 60 Ill. 241; Krieger v. Krieger, 221 Ill. 470; Smith v. Smith, 334 Ill. 370. Indeed, in his answer to the rule to show cause cross complainant asserts his desire to comply with the decree and claims the benefit of it.

We have examined the answers of cross complainant to the rules entered to show cause. They were not, in our opinion, sufficient. The record discloses a wilful refusal on the part of cross complainant to comply with the provisions of the decree while asserting his right to its benefits.

The decree and the orders appeals from are therefore affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

of five S

[illegible]

He then was told the names of people mentioned in the
notes referred to above. They were not, in any manner,
mentioned. The record discloses a slight delay on the part of
these witnesses in coming also the statements of the lawyer while
examining him with the results.

100-443887-100

1994-1995

1991

... ..

38214

U. S. LAUNDRY MACHINERY CORPORATION,
a Corporation,

Appellee,

vs.

HERMAN A. SOMMERS et al.
On Appeal of HERMAN A. SOMMERS
and MARY SOMMERS,

Appellants.

43
APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 629³

MR. JUSTICE SATWORTHY DELIVERED THE OPINION OF THE COURT.

Plaintiff, an Indiana corporation, brought suit against defendant cooperators for the possession of a cleaning machine with attachments. The property was taken and delivered to plaintiff, and defendants were served personally. They filed pleas; the cause was tried by the court; there was a finding of right of possession and property in plaintiff, with damages of one cent; there was judgment on the finding for plaintiff and defendants appeal.

The controversy arises out of a conditional contract of sale made by the parties on November 19, 1931. Thereby the co-partnership of Sommers & Tamm, predecessors of defendants, purchased the property, a cleaning machine with attachments. By the agreement it was to be installed in Chicago, and defendants agreed to pay \$6,000 f. o. b. East Chicago, \$1500 to be paid in cash and the remainder in 36 monthly installments of \$145 each. The agreement provided:

"3. Title and ownership of said unit and all replacements and additions to remain in party of the first part until indebtedness is paid.

* * * * *

5. If indebtedness shall become due and remain unpaid, or if unit is removed, etc., all payments shall be retained as liquidated damages, and party of the first part may take possession of unit."

The principal office of plaintiff was at East Chicago, Indiana. It also maintained an office in Chicago. There is conflict in the evidence as to whether the contract was signed in East Chicago, Indiana, or Chicago, Illinois, but it appears that

the property was at East Chicago, Indiana, and was inspected there by defendants prior to the sale. It also appears that within a week after the sale the property was transported by truck from Indiana to Illinois. Defendants paid \$2500 by check prior to delivery. The invoice rendered to defendants by plaintiff shows a further credit of \$119, leaving a balance of \$4000, for which defendants executed and delivered a note containing the power of confess judgment. This power was invalid in Indiana but valid in Illinois. The uncontradicted evidence shows the note was executed at Chicago and payable there. Defendants thereafter paid two installments of \$200 each and, it would appear, an additional amount of \$44. They have defaulted in the balance remaining due.

In March, 1932, plaintiff's president, Mindenberger, demanded payment. He says Mr. Sommers told him that defendants didn't have the money, and that he had better take the machine out. The next day Mr. Sommers told him that if he wanted the machine he must replevin it. March 8, 1932, defendants' attorneys wrote that it was manifest that because of "defective structure" the machine would not "function efficiently"; that they had abandoned its use; that it was ready to be dismantled and shipped to plaintiff's plant. The letter said, "Kindly remove said machine at your very earliest convenient." On April 8th defendants wrote for the first time charging that plaintiff had made fraudulent representations about the sale. The letter declared the contract rescinded and demands the return of the contract, the note and money paid. On April 8, 1932, plaintiff took the property by replevin writ, and on the 15th defendants, by their attorneys, wrote calling attention to the notice of rescission of the contract and the failure of plaintiff to return the contract, the note and money as demanded.

When the contract was made (November 19, 1931) plaintiff

The property was an East Chicago, Indiana, and was located in
by Belmonts prior to the sale. It also contained some other
wood after the sale was completed was transferred by deed from
Belmonts to Illinois. Belmonts said that by making entry in the
livery. The livery transferred to Belmonts by Belmonts from a
former owner of Illinois, located a Belmont of Illinois, for which the
Belmonts received and delivered a valid receipt and money etc.
Belmonts said. This money was located in Belmont and was in
Illinois. The unincorporated business which was sold was located
at Chicago and paid money. Belmonts is located in the
Belmonts of Illinois and, it would appear, no additional money
of it. They have referred to the business remaining over.

On March, 1935, Belmonts' business, Belmonts, et
acted against. Belmonts said that Belmonts
himself had the money, and that he had before him the money over.
The next day Mr. Belmonts told him that he had received the money from
and Belmonts said that Belmonts' business was sold
at the Belmonts' business at "Belmonts' business" the Belmonts
would not "Belmonts' business"; that they had received the money
that it was money as an investment and money in Belmonts' business
himself. The Belmonts said, "Belmonts' business" was sold and was sold very
Belmonts' business." Belmonts said Belmonts' business for the time
time changed that Belmonts had some Belmonts' business
about the sale. The Belmonts' business was located and was
about the return of the Belmonts, and was sold very well.
Belmonts said, Belmonts' business was sold by Belmonts' business, and as
the Belmonts' business, of Belmonts' business, were located Belmonts
to the Belmonts of Belmonts of the Belmonts and Belmonts of
Belmonts of Belmonts and Belmonts. Belmonts said Belmonts' business
Belmonts' business was sold (Belmonts' business) Belmonts

was not licensed to do business in Illinois. It obtained a license two days before this suit was started. Section 94 of the General Corporation Act of 1919 then in force disqualified an unlicensed foreign corporation doing business in Illinois from maintaining any suit at law or in equity. That law has been superseded by the Business Corporation Act (Ill. State Bar Stats. 1935, chap. 32, sec. 125, par. 125.) This later act seems to provide that the bar of the statute may be removed by taking out a subsequent license. Section 163 (Ill. State Bar Stats. 1935, chap. 32, par. 163 (5)) provides, however, that the enactment of the Business Corporation Act shall not affect any rights accrued under the General Corporation Act of 1919. Under section 94 of the act of 1919, a subsequent license would not qualify a corporation theretofore barred. United Lead Co. v. Elevator Mfg. Co., 222 Ill. 197. In Hoehn Pharmacy v. Hansen Pharmacy, 230 Ill. App. 542, we held that under facts there appearing the provisions of the Business Corporation Act would not apply retroactively. We doubt, however, whether defendants here may be held to have a vested right in plaintiff's statutory disqualification to bring a suit in Illinois.

Much of the evidence offered by defendants on the trial was directed to proving that at the time of the conditional sale November 19, 1931, plaintiff was actually doing business in Illinois, contrary to the provisions of the then Corporation act. The evidence shows conclusively, we think, that plaintiff was doing such business, and the trial Judge expressed that opinion. Nevertheless, for another reason and however the statutes are construed, the plea of disqualification cannot prevail. The contract was for the sale of goods by an Indiana corporation situated in that State. The sale was made to an Illinois copartnership, and the contract required the shipment of the property from Indiana into Illinois. The transaction was therefore in interstate commerce and not subject to the

was not intended to be business in Illinois. It occurred a business
two days before this suit was started, Section 14 of the Corpora-
tion Act of 1875 then in force prohibited an individual
foreign corporation doing business in Illinois from maintaining
any suit at law or in equity. That law was not amended by the
Business Corporation Act (Ill. Public Act No. 137, Chap. 20,
Sec. 180, par. 1-3). The law was passed in 1881 and the act
of the state in 1881 was removed by being put in a separate business
Section 14 (Ill. Public Act No. 137, Chap. 20, par. 1-3)
provided, however, that the amendment to the business corporation
law would not affect any rights secured under the former corpora-
tion act of 1875. Under Section 14 of the act of 1881, a corpo-
ration formed under the former law was not a corporation formed
under Section 14 and was entitled to maintain a suit in equity.
Section 14 of the Business Corporation Act, Ill. Pub. Act No. 137, Chap. 20, par. 1-3
These provisions are contained in the Business Corporation
Act which was passed retroactively. It should, however, be noted that
Section 14 of the act of 1881 is now a vested right in Illinois.
Section 14 of the act of 1881 is now a vested right in Illinois.
Each of the witnesses offered by defendant in the suit was
directed to testify that at the time of the corporation was formed
in 1881, Illinois was actually doing business in Illinois, contrary
to the provision of the Business Corporation Act. The witness stated
that, at that time, that Illinois was doing business in Illinois, and
the fact that defendant had obtained. Defendant, the witness
testified and however the witness was concerned, the fact of the
question cannot be denied. The witness was the fact of the
fact that an Illinois corporation is now in fact doing. The fact
was that in an Illinois corporation, and the witness testified the
significance of the property from Illinois into Illinois. The witness
did not testify in Illinois business and did not testify in the

restrictions of the statute with reference to the licensing of corporations. International Text-Book Co. v. Figg, 217 U. S. 91; Lehigh Cement Co. v. McLean, 245 Ill. 326; London Guaranty & Accident Co. v. Wallis, 334 Ill. App. 497; Industrial Accidentance Corp. v. Haerning, 253 Ill. App. 97; City of Chicago v. Bellaridge, 285 Ill. App. 350; Leung Co. v. Meyer-Rudolph Shoe Co., 361 Ill. App. 327. The contention of defendants, therefore, that plaintiff was disqualified to sue in Illinois cannot be sustained, and the complaint that the court erroneously excluded evidence on the issue of whether the plaintiff corporation was doing business in Illinois at the time the conditional sale was made becomes wholly immaterial.

Defendants contend, in the next place, that the court erred in excluding evidence offered tending, as is claimed, to show that the contract of November 15, 1931, was procured by fraudulent representations. Defendants interposed a plea evidently intended to raise the issue of whether the contract was procured through such means. The averments of the plea, however, are merely general. No facts are alleged therein upon which such charge might be predicated. Such plea is insufficient. Murphy v. Murphy, 129 Ill. 365.

However, even if we assume a sufficient plea, we think the evidence offered was not admissible. The contract was in writing. The evidence offered was that of oral representations made prior to the execution of the contract. In a suit on the contract, such evidence would be clearly inadmissible. Defendants gave notice of rescission, however, and upon the theory that that notice was effective they contend that the evidence was admissible; but the attempted rescission was not effective. Ordinarily, a purchaser may not rescind a contract while retaining the goods he has received under the contract. In that respect defendants undertake to assume inconsistent positions, which ordinarily they may not do. National Cash Register Co. v. Hude, 119 Misc. 36, 7 A. L. R. 990;

Goldman v. Barker, 174 N. Y. S. 715; Gar v. Halfany, 161 Mich. 429; Yellow Cab Co. v. Rosin, 215 Ill. App. 11; General Motors Acceptance Corp. v. Vaughn, 300 Ill. 541. In this court plaintiff attempts to sustain its position upon the theory that the parties agreed to a rescission of the contract. The evidence shows that they did not in fact do so, and plaintiff did not try its case upon that theory. It cannot change its theory in this court. Lewy v. Standard Elevator Co., 296 Ill. 295. The contract being in effect and not rescinded, the evidence offered was immaterial to any issue that could properly arise in the replevin suit. Moreover, on this theory the evidence offered was inadmissible as oral contemporaneous evidence offered to vary the terms of a written contract. Fuchs & Lang Co. v. Pittsford, 248 Ill. 80; Hierling Midland Coal Co. v. Great Lakes Coal and Coke Company, 314 Ill. 281.

Defendants, however, invoke the aid of the statute. They contend that the provisions of the Uniform Sales Act of Illinois are applicable, and that under its provisions they could rescind the sale for fraud and hold the goods until the consideration was returned. They cite Sections 15, 16, and sub-section 3 of section 69 of that act (Ill. State Bar Stats. 1935, chap. 121a.) Sub-section 3 of section 69 provides in substance that where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, subject to a lien to secure the repayment of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 68 of the act.

Assuming the Illinois statute to be applicable, it cannot avail for the reason that defendants did not give notice of their election to rescind within a reasonable time as required by section

3 of the act. The undisputed evidence is that almost four months elapsed between the delivery of the machinery and the notice of defendants that they would rescind. In the meantime, there was no offer of the buyers to return or refusal of the seller to accept the goods. The evidence shows that the machinery was in use, and during that time it must have deteriorated very much. Under such circumstances, defendants' notice to rescind could not avail.

Canada Maple Exchange v. Boulder Paper Co., 223 Ill. App. 168; Bureau Vaisi Co. v. Harrick Bros. Co., 226 Ill. App. 316; Goodlatte v. Ames Sales Corp., 229 Ill. App. 316; Devinat-Kohnen & Co. v. Inc. v. Paragon Hat Co., 243 Ill. App. 231. Defendants are therefore not in any position to claim the benefits of these provisions of the Illinois statute. They cite Goldberg v. Minerva Automobiles, 273 Ill. App. 217, but that was a case in equity brought on the theory that the vendee was without any other remedy at law. This is a suit at law. Under the uncontradicted facts here appearing, proof tending to sustain the plea of fraud could not avail. It was therefore not reversible error to exclude it. Defendants did not undertake to set up any claim by way of counter-claim or offset. Defendants attempted to use the supposed misrepresentations as a defense to the replevin suit. The evidence offered was not available for that purpose. General Motors Acceptance Corp. v. Vaughn, 353 Ill. 541. If there were fraudulent representations defendants are not without their remedy.

For the reasons indicated, the judgment is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

38257

ELIA BELL,
Appellee,

vs.

ESTATE OF JOHN B. BUBBINS, Deceased,
Appellant.

44
APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 6294

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

The claimant, Mrs. Bell, a few days prior to the expiration of the time limited by statute, filed her statement of claim in the Probate court of Cook county against the estate of John B. Bubbins, deceased, for a balance averred to be due on an account which began October 15, 1926, and ended upon his death November 7, 1932. The balance claimed was \$6752.31. Upon a hearing the Probate court allowed the claimant \$1000. The administratrix appealed to the Circuit court, where on a trial de novo before a judge without a jury, the claimant was again allowed \$1000, and the administratrix prosecutes this further appeal.

The ultimate issue in the case is one of fact. John B. Bubbins died at Chicago November 7, 1932. Letters of administration were issued on his estate November 28th. At the time of his death and prior thereto he owned the premises known as 1838 Ellis avenue, where he had resided for many years. Sometime in 1927 to 1928, (the exact date does not appear) his wife, who lived with him on these premises, passed away. For a long time prior to her death she was afflicted with cancer. Mrs. Bell, the claimant, was employed to nurse her during this illness. The record indicates that Mrs. Bell's services in this respect were quite satisfactory. The administratrix testified (and claimant did not deny) that in a conversation with the claimant upon the day of the death of Dr. Bubbins, claimant told her that after the death of Mrs. Bubbins the Doctor gave to claimant a diamond ring and diamond earrings which

† *in situ*

ACCEPTED MANUSCRIPT

1994

112

1. The first group of authors (e.g., [1, 2]) considers the problem of the stability of the motion of a system of particles in the field of a central force. The results of these authors are in agreement with the results of the present study.

933 .A.1 389

Source: U.S. Census Bureau, *Marriage, Divorce, Remarriage in the 1990s*, Current Population Reports, 1995, Table 1.

[illegible][illegible]

had been the property of Mrs. Bubbins, and an automobile.

Mrs. Bell has a husband and two children. Whether before or after the death of Mrs. Bubbins the evidence does not disclose, she with her family moved into the Bubbins home on Ellis avenue, and upon the death of Mrs. Bubbins she seems to have taken charge of it. The telephone, the gas and the electricity were put in her name and paid for by her, and she purchased and paid for the coal used on the premises. She rented rooms to transient guests and collected the rent. She arranged for repairs and decoration of the premises and paid therefor.

"Dr. Bubbins" (whether he was a licensed physician does not appear) was for a long time prior to his death afflicted with bladder trouble. The evidence shows that the claimant gave him necessary care and nursing during his illness, prepared his meals and special diets, assisted him in going to and from his room and took care of it. She continued these services up to the time of his death.

What (if any) arrangement was made for payment for these services is not disclosed by the evidence. There is much evidence by many neighbors, friends, and other persons to the effect that in conversations with Dr. Bubbins he repeatedly expressed to them his gratitude for the services rendered to him by Mrs. Bell, and that he said that "he intended to pay her well * * ; he intended she should be well paid for her fine services to him * * ; Mrs. Bell was very faithful to him and that he was going to see that she was very well paid for it * * ; she would get everything at his death* * ; she was his housekeeper and that he was going to reward her * * ; Mrs. Bell kept his home very nicely and she would be well paid for it." On the other hand witnesses for the estate testified that during the life of Mrs. Bubbins, Mrs. Bell was paid each week, and that long after the death of Mrs. Bubbins the claimant said that

and had the property of Mrs. Jackson, and an affidavit.

Now, well, was a witness and was called. The first witness
or after the death of Mrs. Jackson the witness was called.
The first witness was called. The witness was called.
and after the death of Mrs. Jackson the witness was called.
of it. The witness, the first witness was called.
has been and said that it was, and the witness was called.
now said on the witness. The witness was called.
and called the first. The witness was called.
of the witness and said that it was.

"The witness" (said) was a witness. The witness was called.
was for a long time given to the witness. The witness was called.
the witness. The witness was called. The witness was called.
very late and during the witness, the witness was called.
essential time, the witness was called. The witness was called.
one of it. The witness was called. The witness was called.
now.

Now (it says) the witness was called. The witness was called.
witness is not called by the witness. The witness was called.
by Mrs. Jackson, the witness was called. The witness was called.
in conversation with Mrs. Jackson the witness was called.
the witness was called. The witness was called. The witness was called.
that he said that the witness was called. The witness was called.
the witness was called. The witness was called. The witness was called.
was very difficult to see and that he was called. The witness was called.
very well said that it was; the witness was called. The witness was called.
the witness was called. The witness was called. The witness was called.
Mrs. Jackson was called. The witness was called. The witness was called.
it. The witness was called. The witness was called. The witness was called.
during the time of Mrs. Jackson, the witness was called. The witness was called.
that said after the death of Mrs. Jackson the witness was called.

"whether she got anything in the will, or not, she was satisfied because she had gotten well paid for all she had done for Dr. Bubbins."

The administratrix testified to the effect that after the death of Dr. Bubbins and before the body had been sent from the home to the undertaker she had a talk with claimant. She says: "She told me that she found \$15 in Dr. Bubbins' pocket after his death and she asked me what she should do with it. -- I asked her what arrangements she had with Dr. Bubbins and she stated that back in 1927 or 1928 Dr. Bubbins had turned over the house to her; that she from ^{that} time on had to pay all of the expenses, and that he gave her all the income from the house, that she ran the house as though it was hers; that all meters were changed to her name, that she and her family lived there, that she had collected all of the room rent from the house, and that Dr. Bubbins gave her \$5 a week for the room, but that she had all the bills to pay. She said he used to pay her \$15 a week and then \$10 a week, but that was when she was preparing his meals. I told her that she should take the \$5 a week that she said he owed her out of the \$15. She never turned over the balance of the money to me after I was appointed administratrix, and she hasn't to this day."

Henry Johnson, who says he is a brother of Dr. Bubbins and who at the time of the hearing was living at the home, testified that he was present at his brother's home on the day of his death and heard the conversation between Mrs. Burgess and Mrs. Bell. He says he heard Mrs. Bell say that Dr. Bubbins owed her \$5 and heard her say she had \$15 which she got from Dr. Bubbins' pocket; that he heard Mrs. Burgess tell her to take her \$5 out of that money. He says he also told her that it was all right with him for her to stay on the place, and that two weeks later he gave Mrs. Bell \$15.00 when she told him she needed some money. Dr. Johnson does not corroborate

the remainder of the conversation to which Mrs. Burgess testified, and Mrs. Bell, who was a competent witness as to this occurrence, denied the material facts as stated by these witnesses. She says she did not tell Mrs. Burgess that the Doctor had been good to her and her family, and did not tell her that he did not owe her anything but \$5, but, on the contrary, she stated to her that Dr. Hobbins had played her "a very dirty trick," meaning that he had not provided for her in his will, which had been read out, which afterward appeared to have been ^{so} defectively executed that it could not be probated. The claimant also testified that Johnson paid her \$19.50, but said this payment was made for services in caring for his daughter who became ill while attending the funeral of Dr. Hobbins; Johnson does not deny this to be the fact. The claimant denied the testimony of another witness to the effect that claimant said she was satisfied and had been well paid for all she had done. She also gave testimony (which is not denied) to the effect that at the time of this last alleged conversation she was not at the place where it was said to have occurred, being then confined at a hospital by illness. There was uncontradicted evidence tending to show that the services rendered by claimant to Dr. Hobbins were worth from \$15 to \$25 a week.

On the controverted questions of fact, the finding of the trial Judge, who saw and heard the witnesses, has the same weight in this court as the verdict of a jury.

The Estate invokes the rule that claims made against an estate for personal services rendered by relatives or members of the household of the deceased require much stronger proof to establish them than ordinary claims by strangers, and cites cases such as Collar v. Patterson, 137 Ill. 403. There is no doubt of that general rule, which, however, is hardly applicable to this case, for the reason that it does not appear that claimant was a relative of the

deceased or a member of his family at the time she performed the services.

The Estate also contends that as to many of the matters to which claim was made the statute of limitations was a bar. In view of the smallness of the amount allowed in comparison with the whole claim made, it is apparent no relief was made for any part of the claim which was so barred. There are many cases in the books where claims have been allowed under somewhat similar circumstances. Spillier v. Mac, 145 Ill. 567; Reiffin v. Brown, 195 Ill. 322; Pillsbury v. Early, 328 Ill. 562. The uncontradicted evidence in this case shows that Mrs. Bell rendered important and valuable services to the decedent during his last illness, and the interest of his relatives and the administratrix in him seems (so far as this record discloses) to have begun with his death and the administration of his estate. Two Judges who saw and heard the witnesses have agreed on the amount due to Mrs. Bell for these services, and this court is unable to say that the finding of the trial court is against the preponderance of the evidence.

The judgment is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

...of a ... of his ... of the ... the ...
 ...

The ... also ... that he is ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...
 ... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

... of the ... the ... of the ...

...

...

36281

CHARLES HAMANN,
Appellant,

vs.

WILLIAM M. ANDERSON et al., (Defendants)

CHICAGO TITLE AND TRUST COMPANY, as
Trustee under Trust Agreement known
as Trust No. 20058,
Appellee.

45
APPEAL FROM CIRCUIT
COURT OF COOK COUNTY.

382 I.A. 629⁵

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

In this case plaintiff's Charles Hamann and Fred A. Rathje, as trustee, brought a bill to foreclose a trust deed and a decree was entered. Hamann appeals from that part of the decree which granted the prayer of the cross bill of Charles J. Holland and Chicago Title & Trust Co. that plaintiff's specifically perform their agreement to release certain lots from the lien of the trust deed foreclosed. The cause was heard upon plaintiff's exceptions to the report of a master. These exceptions were overruled, and the specific performance of the agreement to release was decreed.

The material facts appear to be that on July 16, 1927, plaintiff Charles Hamann and his wife entered into an agreement to sell to William M. Anderson 30 acres of land in Cook county, Illinois, at \$275 an acre. Anderson paid \$1000 earnest money and agreed to pay \$10,000 on delivery of the deed and to secure the payment of the balance by the execution of a note secured by a trust deed upon the premises purchased.

The contract was consummated November 1, 1927. Anderson gave his note due in five years from date for the balance of the purchase money, and to secure the note conveyed the premises by trust deed to Rathje as trustee. The trust deed contained the following provision:

CHAS. H. HARRIS
CHAS. H. HARRIS

1934

CHAS. H. HARRIS

CHAS. H. HARRIS
CHAS. H. HARRIS
CHAS. H. HARRIS

1934 A. I. 838

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

CHAS. H. HARRIS

"All the covenants and agreements of the said party of the first part (Anderson) shall extend to and be binding upon him or his heirs, executors, administrators or other legal representatives and assigns.

IT IS FURTHER AGREED by and between the parties hereto that the grantor herein, his heirs and assigns, shall have the right and privilege of subdividing the above described premises into lots, lots and blocks, streets and alleys, and that the Trustee herein named shall join in such subdivision plat and that said Trustee shall, from time to time and as often as thereunto requested, release from the lien of this trust deed, any or either of such tracts upon receipt of a sum of money equal to two (2) times the proportionate part of the indebtedness resting against such premises, except that part or portion of said premises occupied by the dwelling, for which an additional sum of \$2,000.00 shall be paid for the release thereof.

IT IS FURTHER AGREED that with all the payments so made for partial releases, the accrued interest on the amount so paid shall be paid at the time such release is procured.

In ascertaining the quantity of land contained in any tract to be released, one-half (1/2) of the adjoining streets and alleys shall be included in such computation.

The execution of a partial release by the Trustee shall be conclusive evidence that the necessary payment therefor has been made on account of the notes secured hereby and of the performance of all conditions essential to its validity."

Anderson thereafter conveyed the premises to the Chicago Title & Trust Co., trustee under Trust No. 20988, and defendant Charles J. Holland is the beneficiary of this trust. The land was subdivided, the subdivision being known as "Country Club Estates." Payments were made from time to time on the indebtedness, but default was made in the payment of interest and taxes, because of which on February 15, 1933, Remann and Rathje filed their bill to foreclose, in which they claimed a total balance due of \$8,117.84. The cross bill averred that Lots 40, 49, and the north half of Lot 46 had been sold to contract purchasers, naming them, and that prior to the filing of the bill appropriate tenders had been made of the sums necessary under this provision of the trust deed to entitle defendants to releases, but that plaintiffs refused to accept the money, in violation of the provisions of the trust deed, in an inequitable and unconscionable attempt to cut off the rights of innocent third parties and to obtain unjust enrichment from the improvements and buildings constructed on the premises

"All these things will be done for you and your family" (John 14:1-3)

[illegible][illegible]

1998-1999 2000-2001 2002-2003 2004-2005 2006-2007 2008-2009 2010-2011 2012-2013 2014-2015 2016-2017 2018-2019 2020-2021 2022-2023 2024-2025 2026-2027 2028-2029 2030-2031 2032-2033 2034-2035 2036-2037 2038-2039 2040-2041 2042-2043 2044-2045 2046-2047 2048-2049 2050-2051 2052-2053 2054-2055 2056-2057 2058-2059 2060-2061 2062-2063 2064-2065 2066-2067 2068-2069 2070-2071 2072-2073 2074-2075 2076-2077 2078-2079 2080-2081 2082-2083 2084-2085 2086-2087 2088-2089 2090-2091 2092-2093 2094-2095 2096-2097 2098-2099 2100-2101 2102-2103 2104-2105 2106-2107 2108-2109 2110-2111 2112-2113 2114-2115 2116-2117 2118-2119 2120-2121 2122-2123 2124-2125 2126-2127 2128-2129 2130-2131 2132-2133 2134-2135 2136-2137 2138-2139 2140-2141 2142-2143 2144-2145 2146-2147 2148-2149 2150-2151 2152-2153 2154-2155 2156-2157 2158-2159 2160-2161 2162-2163 2164-2165 2166-2167 2168-2169 2170-2171 2172-2173 2174-2175 2176-2177 2178-2179 2180-2181 2182-2183 2184-2185 2186-2187 2188-2189 2190-2191 2192-2193 2194-2195 2196-2197 2198-2199 2200-2201 2202-2203 2204-2205 2206-2207 2208-2209 2210-2211 2212-2213 2214-2215 2216-2217 2218-2219 2220-2221 2222-2223 2224-2225 2226-2227 2228-2229 2230-2231 2232-2233 2234-2235 2236-2237 2238-2239 2240-2241 2242-2243 2244-2245 2246-2247 2248-2249 2250-2251 2252-2253 2254-2255 2256-2257 2258-2259 2260-2261 2262-2263 2264-2265 2266-2267 2268-2269 2270-2271 2272-2273 2274-2275 2276-2277 2278-2279 2280-2281 2282-2283 2284-2285 2286-2287 2288-2289 2290-2291 2292-2293 2294-2295 2296-2297 2298-2299 2300-2301 2302-2303 2304-2305 2306-2307 2308-2309 2310-2311 2312-2313 2314-2315 2316-2317 2318-2319 2320-2321 2322-2323 2324-2325 2326-2327 2328-2329 2330-2331 2332-2333 2334-2335 2336-2337 2338-2339 2340-2341 2342-2343 2344-2345 2346-2347 2348-2349 2350-2351 2352-2353 2354-2355 2356-2357 2358-2359 2360-2361 2362-2363 2364-2365 2366-2367 2368-2369 2370-2371 2372-2373 2374-2375 2376-2377 2378-2379 2380-2381 2382-2383 2384-2385 2386-2387 2388-2389 2390-2391 2392-2393 2394-2395 2396-2397 2398-2399 2400-2401 2402-2403 2404-2405 2406-2407 2408-2409 2410-2411 2412-2413 2414-2415 2416-2417 2418-2419 2420-2421 2422-2423 2424-2425 2426-2427 2428-2429 2430-2431 2432-2433 2434-2435 2436-2437 2438-2439 2440-2441 2442-2443 2444-2445 2446-2447 2448-2449 2450-2451 2452-2453 2454-2455 2456-2457 2458-2459 2460-2461 2462-2463 2464-2465 2466-2467 2468-2469 2470-2471 2472-2473 2474-2475 2476-2477 2478-2479 2480-2481 2482-2483 2484-2485 2486-2487 2488-2489 2490-2491 2492-2493 2494-2495 2496-2497 2498-2499 2500-2501 2502-2503 2504-2505 2506-2507 2508-2509 2510-2511 2512-2513 2514-2515 2516-2517 2518-2519 2520-2521 2522-2523 2524-2525 2526-2527 2528-2529 2530-2531 2532-2533 2534-2535 2536-2537 2538-2539 2540-2541 2542-2543 2544-2545 2546-2547 2548-2549 2550-2551 2552-2553 2554-2555 2556-2557 2558-2559 2560-2561 2562-2563 2564-2565 2566-2567 2568-2569 2570-2571 2572-2573 2574-2575 2576-2577 2578-2579 2580-2581 2582-2583 2584-2585 2586-2587 2588-2589 2590-2591 2592-2593 2594-2595 2596-2597 2598-2599 2600-2601 2602-2603 2604-2605 2606-2607 2608-2609 2610-2611 2612-2613 2614-2615 2616-2617 2618-2619 2620-2621 2622-2623 2624-2625 2626-2627 2628-2629 2630-2631 2632-2633 2634-2635 2636-2637 2638-2639 2640-2641 2642-2643 2644-2645 2646-2647 2648-2649 2650-2651 2652-2653 2654-2655 2656-2657 2658-2659 2660-2661 2662-2663 2664-2665 2666-2667 2668-2669 2670-2671 2672-2673 2674-2675 2676-2677 2678-2679 2680-2681 2682-2683 2684-2685 2686-2687 2688-2689 2690-2691 2692-2693 2694-2695 2696-2697 2698-2699 2700-2701 2702-2703 2704-2705 2706-2707 2708-2709 2710-2711 2712-2713 2714-2715 2716-2717 2718-2719 2720-2721 2722-2723 2724-2725 2726-2727 2728-2729 2730-2731 2732-2733 2734-2735 2736-2737 2738-2739 2740-2741 2742-2743 2744-2745 2746-2747 2748-2749 2750-2751 2752-2753 2754-2755 2756-2757 2758-2759 2760-2761 2762-2763 2764-2765 2766-2767 2768-2769 2770-2771 2772-2773 2774-2775 2776-2777 2778-2779 2780-2781 2782-2783 2784-2785 2786-2787 2788-2789 2790-2791 2792-2793 2794-2795 2796-2797 2798-2799 2800-2801 2802-2803 2804-2805 2806-2807 2808-2809 2810-2811 2812-2813 2814-2815 2816

With no history of this, however, and having been told that this was made in the spirit of interest and respect, I have no objection to its being placed in the collection of the Library of the House of Representatives.

[illegible]

sought to be released; that the value of the improvements in Lot 40 was over \$2500, on the north half of Lot 40, \$2500, and on Lot 40, \$5000.

The answer of plaintiffs to the cross bill admitted these tenders but alleged that the lien of the trust deed was a first and prior lien on the premises not released and denied that their refusal to release was in violation of the provisions of the contract and trust deed.

The master reported in favor of defendants and the chancellor approved the findings. The sole question upon this appeal is whether the chancellor erred in so decreeing.

Plaintiff contends that the maturity of a mortgage, or breach thereof, terminates a right, such as was here given, to demand partial releases of a trust deed, the theory as we understand it being that since the mortgagor is in default in paying the debt and performing other covenants, a court of equity will require him to do equity as a condition precedent to the granting of such relief. Plaintiff relies on authorities such as Reed v. Jones, 133 Mass. 116; Clark v. Cowan, 306 Mass. 332; Morris v. Epstein, 265 Mass. 359; Bartlett v. Fairhaven, 49 Wash. 88, and Christman v. Hay, 43 Fed. Rep. 582, cases in which, under the circumstances appearing, the court refused to lend its aid to the defendants who were in default. On the other hand, defendants rely on Binn v. Vamsha, 40 Mich. 356; Gammel v. Goode, 103 Iowa, 391; Vawter v. Crafts, 41 Minn. 14; Taylor v. Carter, 211 Mich. 368; Lorchenschein v. Northern Michigan Lumber Co., 244 Mich. 403; St. Louis Union Traction Co. v. Chicot County Cotton-Alfalfa Farm Co., 127 Ark. 677; Eschmoller Suburban Fruit Land Co. v. Whaley, 50 Cal. App. 125, and Clark v. Fenton, 135 Mass. 464, 144 Mass. 247, in each of which cases, notwithstanding defaults by defendant in some of the covenants, specific performance of an agreement for a partial release was granted.

54

... to be necessary; that the value of the investment in 1913 is ...

The number of individuals in the study was 100.

On 11/11/54, the following information was received from the Bureau of the Federal Bureau of Investigation, Washington, D. C.:

... ..

1. The above information was obtained from the files of the FBI, New York Office, and is being furnished to you for your information.

to, "The American People's Party," 1947-1954.

Source of words used are the same, except a replacement, instead of

It is important to be aware that, just as the U.S. economy is

There are various ways to do this, but the most common is to use a `for` loop:

and subject this thing to time's, successive tests and strains.

...and the ...

1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 2583. 2584. 2585. 2586. 2587. 2588. 2589. 2590. 2591. 2592. 2593. 2594. 2595. 2596. 2597. 2598. 2599. 2600. 2601. 2602. 2603. 2604. 2605. 2606. 2607. 2608. 2609. 2610. 2611. 2612. 2613. 2614. 2615. 2616. 2617. 2618. 2619. 2620. 2621. 2622. 2623. 2624. 2625. 26

DATE: 10/10/1964 TIME: 10:00 AM FROM: J. J. J. TO: J. J. J.

.....

1. The first group of people who are interested in the results of the study are the researchers themselves. They want to know how well the study was conducted and whether the results are reliable and valid. They also want to know how the study was funded and whether there were any conflicts of interest.

For the purpose of this study, the following hypotheses were tested:

$f(t) = \frac{1}{2} \left(e^{it} + e^{-it} \right)$

1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 26

Journal of Interpersonal Violence 26(10) 1978-1994
© The Author(s) 2011. Reprints and permissions:
<http://www.sagepub.com/journalsPermissions.nav>

... ..

... ..

biochemical, genetic studies in other *Al. fischeri* and *Al. baumannii* strains.

Available by subscription for members of the American Psychological Association.

...and the ...

Plaintiff says the question has never been passed on in Illinois, while defendants insist that Lane v. Allen, 138 Ill. 426, sustains their contention. In that case our Supreme Court said:

"It is suggested by counsel that he who demands equity must do equity, and that Lane should have paid up the whole indebtedness, and not asked to have that released upon which he had paid without paying the rest. It was agreed by the trust deed that partial releases should be executed upon partial payments being made, and it is admitted that such payments were made. The agreement for partial releases did not depend, in any degree, upon a complete payment, but the sole object of the partial release clause was to have a release of a portion of the premises on partial payment and without a full payment. It cannot be said that it would be inequitable to compel the parties to carry out their contract, unless relief is barred under some rule of equity. There is no claim nor evidence that Lane has done anything that could stop him from insisting upon his contract. The bill in this case was filed immediately after the maturity of the last note, and it was not shown that the parties had suffered in any manner or delayed enforcing their rights, relying upon the security upon the whole tract, as was the case in the only authority cited by appellees on this question, where the parties delayed foreclosure for a year and a half, during which they thought, and had a right to think, the mortgage covered the whole land.

It is said that Lane chose the best lots in demanding a release. It would be singular if he did not make such a selection; but the demand was in accordance with the agreement, which fixed different rates for lots according to their location. The fact that he exercised his right to make such a selection cannot affect his claim."

It is elementary that the granting or withholding of specific performance lies in the discretion of the chancellor upon a consideration of all the facts appearing. It would be an endless and unprofitable task to attempt to distinguish the cases cited. In Reed v. Jones, 133 Mass. 116, the party asking specific performance had delayed tender for several years, creating a situation that would have made specific performance of the contract inequitable, and there were somewhat similar circumstances in all the other cases upon which plaintiff relies. We think the substance of doctrine announced in all the cases amounts to this - that a covenant for partial releases from the lien of a trust deed is an independent covenant, that it runs with the land, and that mere default by a defendant in the performance of some of the other covenants will

[illegible]

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

11-11-61

[illegible]

It is necessary that the present or future of the world be considered in the light of the present or future of the world.

...the

100% of the total number of respondents in each category.

1. The following information was obtained from the records of the Bureau of the Census, Department of Commerce, for the years 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2

Since 1947 until the 1950s, many letters not dated beyond
1947 are, handwritten and to be considered all those that are

more recent years and the all-time record value for any

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

7011 10/10/2014 4:30PM - 4:41 PM - 4/10/2014 4:30PM - 4:41 PM

transmitted as it has been found to be well and well received in letters

2 1/2 inches wide each end, each end hole over 14 inch, removed

File removed from file and to come to some value and all indicated

not prevent specific performance, unless circumstances have arisen by which the party seeking the performance is estopped. There are no such circumstances in this case, and the chancellor did not err in granting the relief prayed in the cross bill.

The decree is therefore affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

and several of the best of the world's
 of which the best of the world's
 no more of the world's in this case, and the
 not in the world's in this case, and the

The world's in this case, and the

world's in this case, and the

world's in this case, and the

38149

RICHARD GILLUM, a Minor, by
ANN GILLUM, his Next Friend,
Appellant,

vs.

STANLEY K. GAGE, WALTER SACHSEL
and FRED NEWMANN,
Appellees.

46
APPEAL FROM CIRCUIT COURT
OF CHICK COUNTY.

282 I.A. 630

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action against "Stanley K. Gage and Newmanned Sachsel, a corporation," to recover damages for personal injuries claimed to have been sustained through the negligence of defendants in failing to keep in good repair a certain wooden porch of a building in which plaintiff resided with his mother (she was alleged to be defendants' tenant.) A summons was issued and the sheriff's return shows that the defendants were not found. Afterward an order was entered giving plaintiff leave to amend all papers so as to show as the defendants Stanley K. Gage, Walter J. Sachsel and Fred Newmann; apparently the amendments were made and the suit afterward dismissed as to Gage. The remaining two defendants filed a plea of not guilty and a special plea denying that they owned, possessed, managed or controlled the porch or the apartment building. Afterward, pursuant to notice, the case was placed on the trial calendar and on November 15, 1934, was reached for trial. Neither the defendants nor their counsel appeared. A jury was impaneled, heard the evidence and returned a verdict finding "the defendant" guilty and assessing plaintiff's damages at \$3,000. On the same day judgment was entered on the verdict. In the judgment order it is recited that the cause came on for trial ex parte; that a jury was impaneled (naming them) and that after hearing the evidence the jury returned the following verdict: "We, the jury, find the defendants guilty and assess the plaintiff's damages at the sum of Three Thousand and No/100 dollars," and judgment was entered on the verdict

against the two defendants.

After the entry of the judgment plaintiff waited 32 days, or until December 17th, when he caused an execution to be issued. January 19, 1935, defendants filed the affidavit of an attorney and moved to open up the judgment and for leave to defend. Plaintiff moved to dismiss the motion, and after hearing an order was entered sustaining defendants' motion, judgment was vacated, and plaintiff appeals.

The record discloses that on the hearing of the motion the court was of opinion that the defendants had set up a meritorious defense; that the court, on the trial, had not examined the files, and was of the opinion that the defendants had not filed a plea. The court further stated, as a reason for sustaining defendants' motion to vacate the judgment, that the verdict rendered by the jury found the "defendant" guilty, while the judgment ran against both defendants. Counsel for plaintiff filed an affidavit which is in the record, to the effect that the trial Judge did not give as one of the reasons for setting aside the verdict that it was in the singular, while the judgment was in the plural; but obviously we must take the record as we find it certified to by the trial Judge. Moreover, we think the point is immaterial because whatever reasons the court may have had in mind for granting the motion, if the result reached was the proper one the judgment should be sustained.

Under the present Practice act the verdict of the jury, which we find in the record, must be considered as well as the judgment that was afterward entered thereon. Section 74, Civil Practice Act. The verdict found the "defendant" guilty. There were two defendants. This rendered the verdict so uncertain that it was improper to enter a judgment against both defendants. PARSON v. Schaefflin, 135 Ill. 122. The affidavit filed by the attorney

on behalf of the defendants in support of their motion to vacate the judgment, tended to set up a meritorious defense; and while it also shows that counsel for defendants was guilty of some negligence which might be excusable, yet the principal point to be considered on such a motion is whether there is a meritorious defense. Handelsman v. Clarke, No. 32047, Appellate Court, First District, not reported.

The judgment of the Circuit court of Cook county is affirmed.

JUDGMENT AFFIRMED.

McSurely, P. J., and Hatchett, J., concur.

on behalf of the defendant to support of their action to provide
 the defendant, failed to set up a sufficient defense; and while
 it also shows that counsel for defendant was guilty of some
 negligence which might be considered, yet the principal point is
 he neglected to send a notice in writing that in a proceeding
 between defendant and plaintiff, the latter was entitled to
 that notice, was omitted.
 The defendant on the third day of June 1904 is

attested.

JOSEPH J. JONES.

Subscribed, &c., &c., and sworn to, &c., &c.

38174

LYDIA KIPPENMAN,
Appellee,

vs.

THE CHICAGO MEMORIAL HOSPITAL,
a Corporation, and DUPARQUET,
HUOT & MONEUSE CO. OF ILLINOIS,
a Corporation.

On Appeal of THE CHICAGO MEMORIAL
HOSPITAL, a Corporation,
Appellant.

47
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

282 I.A. 630²

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action against the defendants to recover damages for personal injuries sustained by her as a result of boiling water being thrown upon her by the explosion of a defective coffee urn; she was severely burned. Plaintiff's claim was that defendant, The Chicago Memorial Hospital, a corporation, in whose restaurant the coffee urn had been in use for a number of years, was negligent in failing to properly inspect the urn, and that the defendant, Duparquet, Huot & Moneuse Co. of Illinois, a corporation, manufactured the urn in a faulty manner. There was a trial before the court without a jury, and at the close of plaintiff's case the court found defendant Duparquet, Huot & Moneuse Co., a corporation, not guilty, and afterward on motion of plaintiff's attorney the suit was dismissed as to it. The defendant Hospital put in its evidence and at the conclusion of the hearing the court found it guilty and entered judgment against it in favor of plaintiff for \$2500, and the Hospital appeals.

The record discloses that plaintiff was a graduate nurse, following that occupation since 1920, and on February 12, 1933, the day on which the accident occurred, she was taking care of a patient in the defendant Hospital; that about twelve o'clock on that day she went to the restaurant in the Hospital and which

was conducted by the hospital, to have her lunch. There were a number of other nurses in the dining room at that time. The restaurant was run on the cafeteria plan and as she was near the coffee urn, which was fastened to a table, a great deal of steam was escaping from the urn and particularly from the bottom of it; there was an explosion, the urn tipped over at an angle of about fifteen degrees and a great deal of hot water which the urn contained was thrown on plaintiff, severely burning her. She was confined to the hospital about forty days, during most of which time she suffered great pain.

She had eaten at the hospital regularly for a number of years, apparently when she was taking care of a patient in the hospital. The coffee urn was cylindrical in form, had a capacity of from eight to ten gallons, and was upon a table which had been constructed to support it. The urn stood at the end of the food counter nearest the dining tables used by the nurses and doctors. The hospital purchased the urn in 1927 from the other defendant, the manufacturer of it, and it had been in constant use from that time until the date of the accident. The water within the water chamber was heated by means of a steam coil near the bottom; the coil was connected to a steam boiler in the hospital; the bottom of the urn was a circular piece of sheet copper about one-half inch larger than the diameter of the urn; the periphery of the copper was turned in a flange one-quarter of an inch and fitted into the cylinder of the urn with the edge of the flange downward. It was secured by sweating solder from above between the flange and the side wall.

Defendant Hospital filed three pleas: (1) the general issue, (2) that it did not own, operate, maintain or control the coffee urn, and (3) that it was a corporation organized not for pecuniary profit, to establish and maintain a hospital for the treatment of

was contacted by the hospital, to have him located. There were a number of other nurses in the kitchen, some of them were. The kitchen was run on the hospital plan and as the two men went the police men, which was located in a room, a great deal of noise was made. Seeing that the men had previously been the father of it; there was no suspicion. The two signed over at an angle of about fifteen degrees and a great deal of noise which was also observed was known on slightly, severely burning hot. The two walked to the hospital about forty days, during most of which time the witnesses

found out.

The last scene at the hospital remains for a number of years, especially when the two going into a building in the hospital. The father was apprehended in town, and a copy of it from eight to ten gallons, and was upon a table which was seen connected to support it. The two stood at the end of the table, another person the table which used by the nurses and doctors. The hospital purchased the car in 1937 from the other defendant, the manufacturer of it, and it had been in existence and from that time until the date of the accident. The exact minute the water meter was tested by means of a steam coil near the corner; the coil was connected to a steam boiler in the hospital; the bottom of the car was a circular piece of sheet copper about one-half inch larger than the diameter of the unit; the periphery of the corner was turned in a flange one-quarter of an inch and fitted into the cylinder of the car with the edge of the flange downward. It was secured by rivets which were between the flange and the side wall. Defendants admitted that these elements (1) the general facts, (2) that it is not new, obsolete, maintain or control the engine was, and (3) that it was a construction organized and built in hospital and maintain a hospital for the treatment of

the sick for charitable purposes; that it had no capital stock, paid no dividends and was supported by contributions of citizens. Issue was joined on the first and second pleas, and by leave of court plaintiff filed four replications to the third plea.

The first replication set up that in case plaintiff obtained a judgment against the Hospital there would be no diversion of its funds because it was protected by insurance against such a claim as plaintiff was making. In the second replication it was averred that plaintiff was injured in the restaurant which was operated by the Hospital for profit. In the third replication plaintiff denied that the defendant Hospital was a charitable institution within the meaning of the law exempting charitable institutions from liability for negligence. By the fourth replication it was averred that plaintiff was not a recipient of any charity from the Hospital but was privately employed at the time by a patient in the Hospital who paid the Hospital for her food.

Defendant demurred to the first and fourth replications, the demurrer was overruled, and it elected to stand by its demurrer. It filed a rejoinder to the second and third replications, setting up that it did not operate the restaurant for profit and that it was a charitable institution within the meaning of the law of this State.

On the trial of the case plaintiff offered evidence tending to show that the Hospital was guilty of negligence in the purchase and maintenance of the urn, and the defendant Hospital offered evidence tending to show that it was guilty of no negligence. There was no evidence offered nor suggestions made on the trial that the defendant was a charitable institution, and therefore exempt from liability. A reading of the entire record discloses the fact that the case was tried as though it were an ordinary personal injury case between an individual and a corporation, and this was the theory on which the court made its finding and entered judgment.

[illegible]

Counsel for the defendant Hospital say, after stating the nature of the pleadings and the orders of the court, as above mentioned, that, "As a consequence of the pleadings filed and the orders of the trial court the cause stood at issue on the plaintiff's declaration and the first and second pleas. And on the issues so formed the case proceeded to trial. Necessarily the questions of fact and law raised by defendant's third plea, plaintiff's replications thereto, and the demurrers and rejoinders to such replications were segregated from the issues otherwise established and played no part in the trial of the case. As the defendant's rejoinders to the second and third replications form issues of fact their determination in the trial court must await the action of this court on the questions presented by this appeal."

We do not agree with this contention. As the pleading stood, the case went to trial on plaintiff's declaration, defendant's first and second plea, and the third plea that defendant Hospital was a charitable institution in so far as the issues of fact were raised by the second and third replications to the third plea.

By the second replication the plaintiff alleged that the restaurant was run by the Hospital for profit, to which the Hospital rejoined that it was not run for profit. Plaintiff denied by her third replication that defendant was a charitable institution and it replied that it was such an institution. These were issues of fact that should have been tried on the hearing, and since they were not, the issues thus raised by defendant's third plea were abandoned. Our practice does not permit the trying of issues of fact piecemeal.

We are also of opinion that in view of the manner in which the case was tried, as above stated, the questions of law raised by defendant's demurrers to plaintiff's first and fourth replications

are not properly before us because it is apparent that the trial Judge decided the case in plaintiff's favor and against the defendant solely on the ground that he found the defendant Hospital was guilty of negligence in maintaining the coffee urn. His decision was not in any way based on the fact that plaintiff, in her first replication had averred that defendant carried liability insurance which would protect it in case there was judgment against it, and which was admitted by defendant standing by its Assurer. And the same is true as to plaintiff's fourth replication, in which she set up that she was not a recipient of charity from the Hospital but was hired privately in the Hospital, etc.

In view of the way in which the case was tried and decided, the question for our decision then is, in the finding and judgment that defendant was guilty of ^{the} negligence charged in the declaration, against the manifest weight of the evidence?

Counsel for defendant say that it is; that "the evidence demonstrates that defendant took every reasonable precaution to avoid injury to plaintiff." We think the contention that the finding is against the manifest weight of the evidence must be sustained. There is no claim made that plaintiff was guilty of any negligence or that she did not meet with severe burns and scalds and suffered great agony and pain for many weeks.

Plaintiff testified that about noon on the day in question she was in the restaurant having her lunch; that there were several other nurses there at the time; that she was standing near a table helping herself to some food when apparently the coffee urn standing on the table exploded. The evidence further shows that all the nurses and doctors who patronized the restaurant waited on themselves.

Mary Werhoben, a graduate nurse, testified she was in the restaurant at the time in question, and saw plaintiff there; that

she was familiar with the coffee urn which had been in use there for a number of years; that she noticed the urn "hissing and sputtering and more steam escaping than usual. *** I went up to see if I could turn off the safety valve, but I decided against it on account of the steam. I turned back to the table and was ready to leave when Miss Kippmann (the plaintiff) screamed and at the same time I heard the noise like an explosion and I saw the urn tipping towards me *** I noticed steam and water escaping from the urn after the loud report was heard. The room was filled with steam" and there was water on the floor. *** The steam was coming from the lower end. There was so much steam it seemed like it was escaping from the base near the bottom of the urn. *** I never saw the urn leaking at any time. All I saw was the steam coming out of it."

Irma Hug testified that she was dietitian at the hospital; that she supervised the help in the restaurant; that there were two men who helped in the dining room; that she had been employed at the hospital for three and one-half years and was familiar with the urn; that the urn had been in use in the restaurant since May, 1927, when the hospital was built; that it had not been used since the accident; that the urn had been inspected by the engineer of the hospital; that she was not in the restaurant at the time of the accident; that so far as she could determine the urn was in good working condition prior to the accident; that it was regularly inspected under her supervision by the engineer of the hospital about once a month; that she was in the restaurant on the morning in question and did not notice anything unusual about the urn before the accident, which occurred about noon; it appeared to be working all right; that after the accident the urn was tipped back toward the wall; that the "bottom had left the sides of the urn," which was three or four feet tall and about eighteen or twenty

inches in diameter; that the bottom was attached to the urn with solder; that it was not riveted; that from the time the urn was installed in 1927 until the time of the accident, February, 1933, she had never applied to the manufacturer to service the urn; that all the inspections were made by their engineer.

The general supervisor of the Hospital testified that she had known plaintiff since the former was with the Hospital, about four years; that she was in the restaurant at the time of the accident; that there was some steam escaping from the urn; that she got up to have one of the men who worked in the restaurant turn off the steam but the telephone rang at the time, and the next thing she heard was plaintiff screaming and the room was filled with steam, and there was some hot water on the floor; that she never noticed anything unusual about the urn; it was apparently working all right; that steam frequently escaped, except that on the day in question there was more than usual.

Curtis Young, who had worked in the restaurant as a waiter for about two years and eight months, testified that on the day in question he was about his duties as usual and was not in the restaurant at the time of the accident, but was in the kitchen; that he had been in the restaurant about two minutes before the accident and that during the morning he had cleaned the urn and had made coffee. There was no coffee in the urn at noon but only hot water used for tea; that there was a valve near the bottom which could be turned to shut off the steam; that he heard plaintiff scream and ran into the restaurant and shut off the steam; there was water on the floor around the urn; that he noticed the coffee urn just before he left the cafeteria two or three minutes before the accident and it seemed to be working all right.

John F. Reuser, a licensed stationary engineer employed

known in the city; and the police was directed to the city
 office; and it was not until the day after the
 incident in 1917 that the city of the city, February, 1917,
 and had never until in the morning in the city and
 that all the investigation was made at that agency.

The general reputation of the city, which was the
 that have already been the police was with the police, and
 four years; but was in the morning at the city of the city
 agent; and there was some other relation to the city; and the
 got up to have one of the men who worked in the morning
 all the time for the city; and at the time, and the man
 being the man who was already working and the man was with
 with some, and there was some other relation to the city; and the
 some other relation to the city; and the man was with
 working all night; and there was some other relation to the city
 the day in the morning there was some other relation.

There was, and there was in the morning at a police
 the about the city and the city, which was the city of the city
 question to the city of the city and the man was in the city
 agent of the city of the city, but was in the city; and
 he had been in the morning about the city of the city and the
 that was the city of the city and the man was in the city
 some other relation to the city; and the man was with
 with some other relation to the city; and the man was with
 could be found in the city of the city; and the man was with
 agent and the city of the city and the man was with
 was with the city of the city; and the man was with
 was found before the city of the city and the man was with
 the morning and it seemed to be working all night.

John A. Baker, a licensed attorney at law, was

by the Hospital, testified that he had been so employed for about twelve or thirteen years; that his duties were to look after the boilers and pumps in the building and the heating and lighting apparatus; that the urn was installed about 1924; that it was used continuously from that time until the day of the accident; that part of his duty was to inspect the urn, to look over the safety valves and around the pipes about once a week, sometimes oftener. There was a handhole which could be opened at the side for the purpose of cleaning and inspecting it; that in cleaning out the scales he would scrape it with a piece of file with a hook on the end of it. The handhole was about three inches from the bottom; that he never found the apparatus coated with lime at any time; that the last time he inspected it was about ten days before the accident when the bottom dropped out of the urn; that he never found it leaking; that he was in the restaurant about nine o'clock of the day in question and did not notice anything wrong with the urn; that he inspected the urn after the accident; that it was tipped back at an angle of fifteen degrees and the bottom dropped down; that he did not find much of anything except "the solder was a little loose. It looked like lime had got inside;" that he had occasion in his work to use solder a number of times; that he had soldered copper and brass a number of times; that he had done this kind of work for twenty years; that after the accident he examined the bottom of the urn and found the solder had pulled away from the plate; that it did not seem to be welded; there was little scale; that he could not state whether the fracture of the solder was recent or of long standing; that he had no trouble with the valve of the urn; that the first time he saw the soldered joint was after the accident; that he had always thought it was brass.

Walter A. McDeugall, an architect and mechanical engineer who had engaged in these professions for thirty-four years, testified

by the Hospital, testified that he had been an employee for about
 twelve or thirteen years; that his duties were to look after the
 patients and keep the beds clean and the Hospital and following
 orders; that the day he testified about 1933; that it was then
 considerably from that time until the day of the incident; that part
 of his duty was to inspect the men, to look over the toilet
 and around the place about once a week, sometimes twice.
 was a headache which would be spread all the time for the purpose of
 cleaning and inspecting it; that in cleaning and the man he would
 remove it with a piece of the skin on the end of it. The
 man's name was never given to the patient; that he never found
 the patient except with him at the time; that the man had
 requested it and about ten days before the incident when the patient
 dropped out of the line; that he never heard of it again; that he was
 in the restaurant about a week or two after it happened and the
 man was not there; that he was not there; that he was not there;
 after the incident; that it was signed with an order of the
 doctor and the doctor signed it; that he did not find it
 anything except "the patient was a little better. It looked like
 him but not better;" that he had mentioned in his work he was under
 a number of times; that he had advised against and given a number of
 times; that he had been told of with the doctor's name; that after
 the incident he mentioned the patient to the man and found the patient
 had called away from the place; that it did not seem to be well;
 there was little more; that he would not make mention of the incident
 to the patient and would not let him know; that he was not
 when the wife of the man; that the time he was not
 found was after the incident; that he had always thought it was
 Walter A. Henderson, an employee and employee, and was
 not known in these circumstances for thirty-three years, testified

that he examined the urn some time after the accident; that he had installed and supervised the installation of coffee urns many times; that he had built about fifty-seven restaurants, all of which had from two to four coffee urns; that when he examined the urn in question the bottom was tilted downward but it evidently had no solder at the sides; that about two-thirds of the periphery had broken away from the wall of the urn; that forty and one-half inches of the circumference of the bottom had broken away; that he found no evidence of deterioration or breakage in the steam coil nor no other defects than the fracture of the solder; that there was practically no solder for the forty and one-half inches; that there was lime sediment at the bottom of the urn and flange; that solder does not have a great tensile strength; that whether it was a satisfactory substance to use as was done in the instant case would depend upon where the urn was located; "I would say in that position that it is not a good standard means of support;" that in his opinion some external force caused the bottom to be loosened from the urn, such as vibration from trains; that "what happened to the urn in the instant case was unusual. "An engineer would seldom consider that the solder would be broken away;" that in his opinion there was no solder on the part of the flange that became disconnected from the cylindrical walls of the urn, "but the breaking away had been of long duration. It had been gradually working up to the point where it was about to give way, for a long period of time;" that the best and most usual test to find out if the soldered joint was faulty was to ascertain whether the urn leaks water.

William A. Smith, a supervising, licensed engineer for an indemnity insurance company, testified that on the date of the accident he had occasion to go to the hospital to inspect the coffee urn; that he found it installed on a table in the restaurant; the bottom had dropped out of the urn; that it was standing at an

that he mounted the gun some time after the accident; that he had
testified and summarized the investigation of the case many times;
that he had testified about fifty-seven times; that he had been
there for two or three weeks; that when he examined the gun in ques-
tion the bottom was tilted forward and it was tilted; that he noticed at
the side; that about two-thirds of the bottom was broken away
from the wall of the gun; that forty and one-half inches of the side
curvature of the bottom had broken away; that he found an extension of
extension of distance in the same hole but he did not believe
from the fracture of the shell; that there was something in
evidence for the forty and one-half inches; that there was a line
mark at the bottom of the gun and the gun; that there was a line
a great distance away; that there was a line of evidence and
evidence to see as was there in the hole; that there was a
where the gun was located; "I would say in that position that it is
not a good standard means of evidence;" that in his opinion there was
evidence for the gun to be located in the hole; that the gun was
located from the gun; that "there was evidence to the gun in the hole;
there was evidence." "An engineer would believe that the
evidence would be broken away;" that in his opinion there was no
evidence on the part of the thing that he was interested in; that
evidence was of the gun, "but the evidence was not of
long distance. It had been previously verified as to the gun
it was about to give up, for a long period of time; that was
best and most usual test to find out if the witness found was
likely to be accurate whether the gun was right.
William A. Smith, a witness, located evidence for me
indirectly, indirectly, testified that on the gun of the
evidence he had occasion to go to the witness to locate the gun;
the gun; that he found it located on a table in the room;
the bottom had tilted out of the gun; that it was tilted as an

angle of twelve or fifteen degrees toward the wall of the building; that he found a slight deposit of scale and practically no solder around the joint; that as an engineer he would say that the way the bottom was fastened in the urn was not good engineering practice; that one good way of fastening the bottom of such an urn was by the use of rivets; that where there was no separation of parts one could not tell from merely looking at it whether the joint had been impaired or broken.

This is substantially all the material evidence in the case, and upon a consideration of it we think it clear that defendant was not guilty of actionable negligence. As said by the Supreme court of Massachusetts in Stans v. Boston & Albany Railroad Co., 171 Mass. 336 (1901): "One is bound to anticipate and provide against what usually happens and what is likely to happen; but it would impose too heavy a responsibility to hold him bound in like manner to guard against what is unusual and unlikely to happen, or what, as it is sometimes said, is only remotely and slightly probable."

In the instant case we think the persons connected with the Hospital could not reasonably be held to anticipate, in view of what is disclosed by the evidence, that the bottom would fall out of the urn. We think the defect in the urn was latent, and the evidence fails to show that defendant was negligent in failing to discover this latent defect.

For the reasons stated the judgment of the Superior court of Cook county is reversed and the cause is remanded.

JUDGMENT REVERSED AND CAUSE REMANDED.

McSurely, P. J., and Hatchett, J., concur.

30805

WALTER SHERRIFFS,
Appellant,

vs.

BERTIE E. NEWMAN and HAROLD
E. NEWMAN,
Appellees.

48
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

282 I.A. 630³

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action of trover against defendants to recover \$1000 claimed to be the value of radiator covers, electric fan, ice box, gas stove, oil burner, silestone faucet and thermostat, all alleged to be in the premises at 638 North Fair Oaks avenue, Oak Park, Illinois. Defendants, through their counsel, filed a plea of not guilty. Several months thereafter plaintiff's counsel served notice on defendants' counsel to have the case placed on the trial calendar of the Honorable James F. Kelly, Judge of the Superior court of Cook county. About three months thereafter, viz., January 29, 1935, the case was reached for trial. Plaintiff appeared but neither defendants nor their counsel appeared on the trial. There was an ex parte hearing before the court without a jury and a finding and judgment in plaintiff's favor for \$618.94.

After a lapse of more than 30 days from the time the judgment was entered defendants were advised by letter from plaintiff's counsel of the entry of the judgment against them. They immediately took the matter up with their attorney, and on March 15, 1935, filed their verified petition to open up and vacate the judgment and to set the case down for trial on its merits. Plaintiff moved to strike the petition which, under the old practice, was in the nature of a demurrer; the motion was overruled; the prayer of plaintiff's petition was allowed, the judgment vacated, and plaintiff appeals.

The motion to vacate the judgment having been made after more than 30 days had elapsed from the time the judgment was entered,

is warranted only by virtue of the provisions of Section 72 of the Civil Practice act which took the place of Section 89 of the old Practice act. The motion provided for by Section 72 was substituted for the common law writ of error coram nobis. Chesman v. So. Amer. Ins. Co., 308 Ill. 179. Errors of fact which may be availed of on the motion are those that do not appear of record and which, if known to the court at the time the judgment was entered, would have prevented its rendition. "Illustrations of such matters are the disability of the parties to sue or defend, the failure of the clerk to file a plea or answer, and the omission to interpose, through fraud, duress or excusable mistake and without negligence on the part of the defendant, a valid defense existing in the facts of the case." Jacobson v. Ashkinars, 337 Ill. 141; McCord v. Briggs & Turivas, 338 Ill. 158.

In the McCord case the court said (p. 166): "The office of the writ of error coram nobis is to bring to the attention of the court errors of fact, such as the death of either party pending the suit and before judgment therein, or infancy where the party was not properly represented by guardian, or coverture where the common law disability still exists, or insanity at the time of the trial, or a valid defense existing in the facts of the case but which, without negligence on the part of the defendants, was not made, either through duress or fraud or excusable mistake, such facts not appearing on the face of the record, and which, if known by the court, would have prevented the rendition and entry of the judgment."

The question, then, for decision is, Do the facts set up in defendants' verified petition in support of their motion to open up the judgment and for leave to defend, bring the defendants within the rule above announced? The substance of the allegations of the petition is that plaintiff held a second mortgage on de-

defendants' home in Oak Park, in which the chattels (to recover the value of which this trover case was instituted) were located; that defendants being unable to pay off the mortgage deeded the property by proper conveyance to plaintiff; that it was agreed between them and plaintiff's counsel (who represented plaintiff in the negotiation leading up to the transfer of the property) that defendants might remove the chattels when they left the premises, and that defendants did so. The petition, we think, sets up a meritorious defence and must be assumed to be true on this record because of defendants' motion to strike the petition, which is in the nature of the old demurrer, which admitted the facts that were properly alleged in the petition. Before the court would be warranted in opening up the judgment and having the case heard on its merits, the defendants would be required to show by their petition an "excusable mistake and without negligence" on their part in failing to present their defense when the case was reached for trial. Of course the negligence of their lawyer is imputable to them, and we think it clearly shows that there was negligence on the part of defendants' counsel. The petition of defendants sets up in this respect that they employed an attorney to represent them. And it further appears from the petition that the attorney turned over the matter of watching the case on the trial calendar to another attorney in the same suite of offices, and that a number of times he discussed the question with that attorney; that later on that attorney became ill and was not at the office the latter part of January, 1938, at the time the case was heard; that while he was away the matter was turned over to another attorney - what the other attorney did does not appear. The record, however, discloses that the case was on the trial call of Judge Kelly for a number of days and was reached in the regular order; and the

...in which the ...
...the value of which ...
...that ...
...property ...
...between them ...
...in the ...
...that ...
...with ...
...was ...
...this ...
...which ...
...these ...
...court ...
...the ...
...to ...
...negligence ...
...when ...
...their ...
...that ...
...The ...
...played ...
...then ...
...refusing ...
...the ...
...conceded ...
...between ...
...Kenny ...
...party ...
...other ...
...these ...
...number ...

fact that it appears that at the time the case was heard counsel for defendants was engaged in the trial of another case, cannot be availed of by the defendants because that fact was not brought to the attention of the trial Judge. Clearly the petition fails to show an "excusable mistake" which resulted without negligence on the part of defendants. They have not brought this within the rule, and the court was not warranted in vacating the judgment.

For the reasons stated the judgment of the Superior court of Cook county is reversed and the cause remanded for further proceedings in accordance with the views expressed in this opinion.

REVERSED AND REMANDED.

McSurely, P. J., and Matchett, J., concur.

That there is no report that at the time the above was made
 for information was made in the trial of another case, and
 he called at the residence of the defendant and that he was
 in the presence of the father of the defendant. He was
 to show on "separate evidence" which would be sufficient
 on the part of the defendant. They were not present at the trial
 the trial, and the court was not requested to remove the
 defendant.

For the reasons stated the judgment of the court is
 reversed and the case remanded for further
 proceedings in accordance with the views expressed in this
 opinion.

REVEREND AND HONORABLE,

February 2, 1901, and March 2, 1901.

38236

IDA B. THURSTON,
Appellee,

vs.

DR. JOHN C. ELLIS,
Appellant.

49
APPEAL FROM SUPERIOR COURT
OF COOK COUNTY.

202 I.A. 630⁴

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action for slander against defendants Dr. John C. Ellis and Dr. Charles L. Lewis. The case was tried before the court without a jury. The court found defendant Dr. Charles L. Lewis not guilty; defendant Dr. John C. Ellis was found guilty and plaintiff's damages assessed at \$600. Judgment was entered on the findings and defendant Ellis appeals.

Plaintiff charged that the slanderous words were spoken in Chicago April 14, April 15 and April 26, 1934. Both defendants denied the charges made against them.

The record discloses that a Masonic and Eastern Star Home was conducted at Rock Island, Illinois, for indigent members of the order. This home was under the management of a board of trustees, of which defendant Ellis was the president. Plaintiff was employed as matron of the Home and was a member of the order of the Eastern Star. In March, 1934, defendant Ellis, as president of the board of trustees, notified plaintiff that her services would be dispensed with May 31, 1934, and May 23, 1934, plaintiff brought this suit.

Plaintiff testified that her home was in Chicago and that she had been matron of the Home in Rock Island for some time; that April 26, 1934, she talked to Dr. Ellis and a Mrs. Jackson, two officers of the Home, at a charity ball given in Chicago for the benefit of the Home at Rock Island; that she asked Dr. Ellis if she might see him and Mrs. Jackson, and they went downstairs to

54194

RECEIVED
JAN 10 1964
U.S. DEPT. OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D.C. 20535

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-11-2010 BY 60322 UCBAW

080.A.1 900

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-20-2010 BY 60322 UCBAW

...on the
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..

Chicago April 13, 1934, Mr. J. Edgar Hoover, U.S. Department of Justice, Washington, D.C.

[illegible]

THE ABOVE LISTED INDIVIDUALS ARE THE ONLY INDIVIDUALS WHOSE NAMES ARE KNOWN TO THE FBI AS BEING ASSOCIATED WITH THE KKK IN THE UNITED STATES.

the lobby; that she then told the doctor that she had heard some slanderous rumors concerning herself that were spoken by the doctor; that she heard the doctor had stated on April 14th that plaintiff would soon be "let out" as matron of the Home, and that he had uttered slanderous words concerning plaintiff as the reason for such action; that the doctor said Mrs. Snedch had told him what plaintiff was doing, which tended to bring scandal upon her.

Plaintiff further testified: "I was discharged by the board in June;" that about May 8, 1934, she again asked Dr. Ellis concerning the slanderous words claimed to have been uttered by him, and the doctor said he had heard the words from Victor Thompson. She further testified that defendant Dr. Lewis was one of the trustees of the Home.

Mrs. Callie Harris, called by plaintiff, testified that she lived in Chicago and was a member of the Eastern Star; that she had known plaintiff for about fifteen years; that the witness was a member of the board of trustees of the Home at the time in question; that on April 15, 1934, she saw Dr. Ellis in Chicago at a tea given at Mrs. Foushe's home; that there were a number of people in the room; that Dr. Ellis and herself went upstairs to a private room where there was no one present but the two and had a conversation; that at that time she inquired of the doctor why they were discharging plaintiff as matron of the Home; "I asked him if she had committed an immoral act with someone in the Home; he said it was with some white man in Rock Island; and I shook my finger at him and I said *** I am going to make you prove it."

Dr. Ellis testified that he lived at Decatur, Mason county, Illinois, and was a physician; that he was president of the board of trustees of the Rock Island Home and at times had charge of the operation of the Home; that he was in Chicago April 15, 1934, and

[illegible][illegible][illegible]

met Mrs. Harris at Mrs. Fauche's home; that Mrs. Harris said she wanted to talk to him privately, and they went to a private room upstairs where no one was present but themselves; that at the meeting he did not say to Mrs. Harris that plaintiff was immoral or anything of that nature; that Mrs. Harris asked why they were discharging Mrs. Thureston as matron of the Home and he told her it was because of insubordination; that he told Mrs. Harris that a Mrs. Enoch had told him that "a white man was visiting Mrs. Thureston at the Home;" that Mrs. Harris got very angry and said she would make him prove it; that he told her he knew nothing about the matter except what Mrs. Enoch had told him; that he was not concerned with the question; that on different occasions plaintiff had disobeyed orders in connection with the running of the Home and it was for this insubordination that plaintiff was being discharged.

The witness denied that he had, at the meeting of April 14 stated anything concerning plaintiff's morals; that he did not mention plaintiff's name at that time; that he had a conversation with plaintiff on April 28, 1934; that he never at any time said that plaintiff was an immoral woman.

Dr. Lewis testified that he lived at Glen Ellyn, DuPage county, Illinois, and for twelve years had an office in Chicago; that he did not hear the conversation between plaintiff and Dr. Ellis at the charity ball on the night of April 28, and denied what plaintiff had said at that meeting. He further testified that he did not say plaintiff's morals were in question; that he was at the meeting of April 14 and did not hear the plaintiff's name mentioned.

Victor Thompson testified that he attended the meeting of April 14 and that Dr. Ellis said nothing against plaintiff at that time; that he was present on April 28 but did not hear what was said between the parties.

met Mrs. Smith at Mrs. Toward's house; that Mrs. Smith went and
 wanted to talk to him privately, and they went to a private room
 upstairs where he has been present for some time; that at the meet-
 ing he did not say to Mrs. Smith that plaintiff was innocent of
 anything of that nature; that Mrs. Smith asked why they were there
 together and he said that he was not at the time; that he said it was
 because of some misunderstanding; that he told Mrs. Smith that a
 woman had told him that "a white man was visiting her" and that
 the name was "John"; that Mrs. Smith was very angry and told him to
 him prove it; that he said that he knew nothing about the matter and
 that Mrs. Smith had told him; that he was not concerned with
 the question; that he did not remember plaintiff and did not
 know in connection with the running of the house and it was for
 this reason that plaintiff was being discharged.
 The witness denied that on May, at the meeting of April 11
 stated anything concerning plaintiff's matter; that he did not know
 then plaintiff's name at that time; that he had a conversation with
 plaintiff on April 10, 1934; that he never at any time said that
 plaintiff was an innocent woman.
 Mr. Smith testified that he lived at 1212 North 10th Street,
 Omaha, Nebraska, and that during 1934 he was in Omaha;
 that he did not know the conversation between plaintiff and Mr.
 Smith at the meeting held on the night of April 10, and during
 that plaintiff was said at that meeting. He further testified
 that he did not say anything to Mrs. Smith in question; that he
 was at the meeting of April 11 and did not know the plaintiff's name
 mentioned.

Victor Thompson testified that he attended the meeting of
 April 11 and that Mr. Smith said nothing concerning plaintiff at that
 time; that he was present on April 10 but did not know what was said
 between the parties.

There is other evidence in the record, but we think it unnecessary to discuss it further.

Defendant contends that the judgment is wrong and should be reversed because the suit was brought in Cook county against Dr. Lewis who lived in DuPage county, and the court having found him not guilty could not proceed against defendant Dr. Ellis who lived in Macon county and was there served with process. There is no merit in this contention. The case was tried and concluded and the judgment entered on March 18, 1935. Up to that time there was no complaint made that the suit was not properly brought in Cook county against both defendants. Four days later the defendant made a motion to vacate and set aside the judgment and to grant a new trial because of the alleged error in joining Dr. Ellis. Obviously the court had the right to deny the motion at that time. Moreover, there is no merit in the contention because the alleged cause of action arose in Cook county where it is alleged the alleged slanderous words were uttered. Dr. Lewis had an office in Cook county; plaintiff lived in Cook county and the evidence shows that Dr. Ellis was often in Cook county on the business of the Home. In these circumstances the court had jurisdiction, and there is nothing in section 7 of the Civil Practice act that would oust the court of jurisdiction. The case was properly brought in Cook county.

Nor was there any error in the ruling of the court in refusing to grant a more specific bill of particulars. It is obvious that the bill of particulars filed was sufficient and it is not claimed defendants were not sufficiently advised of the charge made against them.

Defendant further contends that the manifest weight of the evidence shows he did not utter the alleged slanderous words complained of, and that the judgment should be reversed for this

These in some instances is the subject, but in some is

secondary in character is the subject.

Defendant contends that the judgment is void and should

be reversed because the bill was returned in this county against

Mr. Davis who lived in Chicago county, and the county clerk found

him not legally dead and returned against defendant Mr. Davis who

lived in Cook county and the same person with process. There is

no basis in this contention. The return was filed and executed and

the judgment entered on March 18, 1930. Up to that time there was

no complaint made that the bill was not properly returned in Cook

county against both defendants. Four days later the defendant

made a motion to vacate the bill and while the judgment was in force a

new bill because of the alleged error in failing to file.

Obviously the court was not able to deny the motion at that time.

However, there is no basis in the contention because the alleged

error of return found in Cook county would be in all right the

alleged mistake would have occurred. Mr. Davis was an officer in

Cook county; defendant lived in Cook county and the witness who

testified that he was with the defendant on the morning of the

death. It would be impossible for the court to find that the

is missing in section 7 of the Civil Practice and Remedies Act

the error of jurisdiction. The same was correctly returned in Cook

county.

For the above reasons the bill is void and the court is to

return in favor of the defendant and the judgment is reversed.

That the bill is void because it was returned in Cook county

against defendant who was not legally dead is the basis

of the bill.

Defendant further contends that the judgment should be set

aside because he did not know the alleged mistake was made when

filed in Cook county and that the judgment should be reversed for this

reason; and defendant further contends that in any event the judgment cannot stand because, even if it be assumed that defendant Ellis did speak the words claimed to have been slanderous, he was not guilty because the matter was privileged. We think the latter contention must be sustained. Smith v. Lidenyl, 226 Ill. App. 402; Everett v. DeLong, 144 Ill. App. 496. The evidence is that the conversation in which it is claimed the slanderous words were spoken was private between the defendant Ellis, who was president of the board of trustees in charge of the Home, and another trustee, Mrs. Harris. Under the circumstances the defendant Ellis had a right to tell another trustee why plaintiff was being discharged. And the same is true as to what is claimed to have been said at the meeting on April 23rd, where plaintiff accused defendant Ellis of uttering the slanderous words on April 14th.

Ellis having denied that he uttered such slanderous words, is entitled to contend here that in any event the conversations were privileged. Everett v. DeLong, 144 Ill. App. 496.

For the reasons stated the judgment of the Superior court of Cook county is reversed.

JUDGMENT REVERSED.

McSurely, E. J., and Hatchett, J., concur.

For the reasons stated the following is recommended:

That the Commission be authorized to conduct such investigation as may be necessary to determine the facts in the case of the above-named persons and to report thereon to the Senate.

Very respectfully,
J. Edgar Hoover, Director

London, 11. April 1894. 10. 17. 1894

36853

RICHARD E. SCHMIDT, HUGH E. G.
GARDEN, CARL A. ERIKSON, and JOHN
E. DUTCHER, a copartnership doing
business as SCHMIDT, GARDEN & ERIKSON,
Appellees,

vs.

EUGENE R. HUGUELET, JAMES B. HUGUELET,
WILLIAM F. HUGUELET, JOSEPH B. HUGUELET,
DAVID E. HUGUELET and JOHN F. HUGUELET,
copartners doing business as HUGUELET
BROTHERS,

Appellants.

APPEAL FROM CIRCUIT
COURT OF MOORE COUNTY.

232 I.A. 631

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiffs brought an action of assumpsit against the defendants to recover \$23,137.42 claimed to be due them for services rendered as architects in connection with the construction of a garage and an apartment building. There was a jury trial and a verdict and judgment in plaintiff's favor for \$16,500 and defendants appeal.

The record discloses that plaintiffs are architects and have been rendering architectural services for many years; that defendants, six brothers, own and have been conducting a garage located on the near north side of Chicago; that since 1914 plaintiff Richard E. Schmidt had been keeping his auto-mobile in defendants' garage, and about February, 1927, had a talk with one of defendants concerning the building by defendants of a new garage and an apartment building on the property owned by defendants.

The evidence of both plaintiffs and defendants is that about that time an oral agreement was made between the parties for the construction of a garage ^{an} apartment building, plaintiffs to perform the architectural services. Plaintiffs' position is that plaintiffs were to be paid for such services six per cent of the cost of the buildings. On the other hand defendants'

contention is that the agreement was that plaintiffs were to be paid the 6% on condition that plaintiffs were to make arrangements for defendants to obtain the money with which to pay for the buildings and that in case plaintiffs did not make such arrangements they were not to be paid for their services. Plaintiffs denied that there was any such condition, but that they were to be paid for the services they performed. This is the only material point upon which the parties disagree.

The evidence further shows that plaintiffs shortly thereafter commenced to prepare plans and specifications for the proposed buildings and that a number of persons employed by plaintiffs were engaged in doing the work. Some time thereafter plaintiff Schmidt submitted a set-up of defendants' property to the Cosmopolitan State Bank, of which he was a director, with a view of obtaining the money with which to defray the cost of the buildings. Shortly thereafter defendants executed a mortgage on the property to the bank, or to its subsidiary, for \$300,000 and the construction of the garage was commenced. This money from time to time was withdrawn from the bank to pay the cost of the garage and some mortgages on defendants' property. The garage was constructed at a cost of about \$160,000, and piling was driven in making the foundation for the adjoining apartment building. The two buildings were to cost approximately \$750,000, and after about \$20,000 was expended in preparing the foundation for the apartment building the money with which to construct it could not be obtained and it was not constructed.

There is considerable evidence in the record that both parties endeavored to obtain the balance of the money but were unsuccessful. Plaintiffs were paid in full for the services they rendered in and about the construction of the garage, \$9,400.

Plaintiffs claim they had performed all the services required of them by the contract except for the supervision of the construction of the apartment building which, the evidence shows, would be 1.5 of the 6%. Deducting this from the 6%, plaintiffs claim there was due them 4.5% of the estimated cost of the apartment building, and presented their bill on this basis. Defendants refused to pay the bill, contending that it was part of plaintiffs' contract to obtain all of the money, and having failed to do so they were not entitled to any further payment.

Defendants contend that the judgment cannot stand because plaintiffs' action is brought not to recover for the value of the services rendered on a quantum meruit but on an express contract; that they cannot recover on an express contract without showing full performance of the contract on their part, and not having done so, the judgment should be reversed.

Plaintiffs' declaration was the consolidated common counts for work and services performed. They offered evidence tending to show they had spent 8,800 hours in preparing plans, specifications, etc., and this is not controverted. They called two architects, Hall and Jensen, who qualified as experts, and each testified that the usual, fair and reasonable charges made by architects in Chicago in the years 1927 to 1931 for architectural services in connection with the construction of 12 and 20 story apartment buildings was 6% of the cost of the work; that 3/10ths of the 6% was the usual, fair and customary charge for supervising the construction of such buildings. There is no evidence to the contrary. This would leave 7/10ths of the 6% or 4.2% as the reasonable value of the services rendered by plaintiffs. In these circumstances, if the evidence showed plaintiffs had entered into the contract as plaintiffs contended was done, and that they were to receive 6% of the cost of the proposed buildings in payment for their services, and that defend-

Plaintiff's claim that she performed all the services rendered at
from by the defendant except for the supervision of the construction
of the apartment building which, she advised, would be 1.2
at the 5th. According to the 1st, Plaintiff's claim that she was
and from 4.25 of the estimated cost of the apartment building, and
apartment claim still on this basis. Defendant's refusal to pay the
bill, contending that it was part of Plaintiff's contract to obtain
all of the money, and having failed to do so they were not entitled
to any further payment.

Defendant's motion that the judgment should stand is denied.
Plaintiff's motion is granted and to recover the full value of the
services rendered on a quantum meruit basis on an implied contract;
that they cannot recover on an express contract; secondly
that defendant's motion is denied on their part, and not having done
so, the judgment should be reversed.

Plaintiff's contention was the amended answer should be
for work and services rendered. They alleged evidence tending to
show they had spent \$3,500 more in carrying on the construction,
and, and this is not controverted. They called two witnesses,
Hall and Jensen, who testified as experts, and each testified that
the usual, fair and reasonable charges made by architects is 10% of
the cost of the building. In the year 1932 the architectural services in connection
with the construction of 12 and 14 story apartment buildings was
\$5.00 per cent of the cost; that 10% of the cost of the work,
that the ordinary charge for supervising the construction of such
buildings. There is no evidence in the answer, that would justify
Plaintiff at the 5th of 4.25 as the reasonable value of the services
rendered by Plaintiff. To their detriment, if the evidence
shows Plaintiff had rendered more the services as Plaintiff now
pleads the fact, and that they were to receive 10% of the cost of the
apartment building is payment for their services, and that when-

ants failed to carry out their part of the contract by obtaining the money with which to pay for the apartment building, we think it obvious that plaintiffs were entitled to recover for the reasonable value of the services they had rendered. Wilson v. Bauman, 30 Ill. 493. In that case the declaration contained but the common counts. Plaintiffs' claim was for services rendered as architects in the preparation of plans and diagrams of the building to be erected by the defendant. Plaintiffs claim the work was done under a special contract which they were prevented from fully performing by the wrongful act of defendant. The court there said (p. 494):

"The authorities cited by plaintiffs' counsel certainly sustain the position that, where one party is guilty of a failure to perform his part of a special agreement, which prevents the other party from performing his part of the contract, the latter may abandon the contract and bring assumpsit for what he has done under it, whenever that action might be maintained but for the special agreement."

Defendants contend that the judgment should be reversed because the verdict of the jury is against the manifest weight of the evidence. Plaintiff Richard E. Schmidt testified that his firm was employed by defendants to perform architectural services on the two buildings, for which plaintiffs were to be paid 6% of the cost of the buildings; that the contract was oral. Three of the defendants, Eugene Huguélet, William Huguélet and James Huguélet, testified that the contract was oral and that it was agreed that plaintiffs were not to be paid for their services unless they secured some person who would lend sufficient funds to defendants to pay for the apartment building. The evidence shows that plaintiff Richard E. Schmidt was a director of the Cosmopolitan State Bank; that he talked with defendants as to the nature and extent of their property and the encumbrances thereon, and on February 3, 1935, wrote a

[illegible]

letter on behalf of plaintiffs to defendants in which he enclosed "two copies of the financial set-up" of the proposed apartment on Walton Place, and continuing said, "I will submit a copy to Mr. Gustave F. Fischer, president of Cosmopolitan State Bank, on Tuesday morning and advise you of his opinion promptly upon its receipt." And on the next day Schmidt, on behalf of his company, wrote another letter to defendants in which it was said: "The writer submitted a financial set-up for the proposed apartment house and addition to your garage to Mr. Fischer and the other directors of the Cosmopolitan State Bank this morning and they agreed to investigate the matter further. Mr. Fischer will telephone to you concerning financial details. He may also wish to have you call him. *** We suggest that you take the blueprints with you when you call on Mr. Fischer, only, however, to indicate to him that we are giving the matter serious thought."

June 13, 1928, defendant Eugene Huguot and wife executed a trust deed on the premises to the bank to secure a loan of \$300,00. July 20, 1928, plaintiff Schmidt, for his firm, wrote defendants saying: "Inasmuch as you no doubt wish to be fully informed concerning the basis of our charge for professional services, we have prepared the enclosed letter. The printed section may seem formidable, but its use is a convenience and indicates custom."

"If you find same satisfactory, please sign both copies and return carbon copy to us." Enclosed was the letter or written contract which was in the form of a letter from defendants to plaintiffs, in which it was stated: "Inasmuch as you have directed us to proceed with the preparation of plans for your proposed addition to your garage at 908-916 Huguot Place, and also the plans for your proposed apartment building at 63-65-67 E. Walton Place, it seems desirable to confirm our verbal agreement for our services on this work. *** You shall pay us for our services on this work

a fee of six per cent of the total cost of the completed buildings." Defendants received this contract but it was never signed by them. And plaintiff Schmidt testified that he never spoke to any of the defendants afterward as to why it had not been signed by them and returned. Defendant Eugene Augustiet testified that he received this contract in July, 1928, and that shortly thereafter he saw plaintiff Schmidt at the garage and they had a conversation about the contract; that they were alone. "Q. What, if anything, was said about this? [the contract]." A. I said, 'Mr. Schmidt, I got your two contracts there,' and I said, 'that is not according to our agreement.' 'Oh,' he said, 'that is just a form coming through the office.' I said, 'All right'; that he still had the contract but it was never signed.

Ernest A. Schmidt, who represented the general contractors on the work, viz. Schmidt Bros. Construction Company, and who was not related to plaintiff Schmidt, called by the defendants, testified that he had a conversation with plaintiff Richard A. Schmidt at the latter's office in 1928 at which one of the Augustiets was present; that he talked with Schmidt afterward at the garage; that he was preparing estimates for the excavation work; that the talk was mostly about the construction. The substance of one of these conversations was, - "Schmidt [plaintiff] talked to us about the construction and getting the costs down and he said that he was arranging for the loan or had arranged for the loan and it was a question of getting the costs of the construction on a basis where the owner could make returns on the investment;" that he told Schmidt that they had been promised the work of constructing the apartment building; that they were endeavoring to keep the costs down and that plaintiff Schmidt said they were all interested in keeping the costs down "because the financing was taken care of, there was no question about getting the money;" that some of the

defendant owners were present at the time; that we should go ahead with the foundations until the plans were finished for the superstructure; "I do not recall any specific remarks there, but that everything was set to go, the finances and everything."

Eugene Huguélet testified that plaintiff Schmidt told him he had arranged for a loan at the bank and for him and his wife to come over and sign a mortgage so that the money would be available and that they did so, and \$300,000 was made available as above stated.

James Huguélet and William P. Huguélet, two of the defendants, also testified that they were present at the conversation between plaintiff Schmidt and their brother Eugene at the time the oral contract was made, and that Schmidt said he would get all the money that was needed for the garage and the apartment building, and unless he did so plaintiffs would not be paid for their services.

The evidence also shows that defendants for many years were well acquainted with Mr. Fischer, president of the Metropolitan State Bank, and had been doing business with that bank for many years; that they deposited the moneys received from their garage in the bank, which sometimes ran from \$5000 to \$6000 a month; that they had borrowed on previous occasions some \$20,000 which was secured by a mortgage on the property in question.

There is a great deal of other evidence in the record, which we have carefully considered but which we think unnecessary to detail here. Upon a careful consideration of all the evidence we are of opinion it is clear that plaintiff Schmidt was endeavoring to help defendants in securing the money with which to pay for the cost of the buildings, and that his work was not, in fact, confined to the drawing of plans and specifications.

The court told the jury, "The defendants claim that the employment was on condition that the plaintiffs were not to be paid unless the plaintiffs secured a loan for the defendants adequate to construct the apartment building and to pay for the

...and ... were present at the time; that he ...
... with the ... were ...
...; "I do not recall any ...
... was not ...
...
... he had ...
... and ...
... and that they ...
...
... also ...
... between ...
... that ...
... money ...
... and ...
... The ...
... well ...
... State ...
... years; ...
... the ...
... they ...
... caused by a ...
... There is a ...
... when we ...
... to ...
... we are ...
... to help ...
... sent of the ...
... placed on the ...
... The ...
... equipment ...
... well ...
... sent to ...

architectural services. The plaintiffs deny that the employment was on such a condition," and that unless it found that plaintiffs had proved their version of the agreement by the greater weight of the evidence the verdict of the jury should be for the defendants. By its verdict the jury found in favor of plaintiffs and upon a careful consideration of all the evidence, we are unable to say the verdict is against the manifest weight of the evidence. In these circumstances we are not warranted, under the law, in disturbing the verdict.

But the defendants further contend that the court erred in admitting evidence on the part of plaintiffs over their objection. The complaint is that the court erred in admitting plaintiffs' exhibits 19, 20, 21, 22, 23, 27, 33, 40 and 41. Exhibit 19 is a receipted bill for \$9,000 and Exhibit 22 one for 1499.98 for services rendered by plaintiffs for defendants in connection with the garage. In support of their contention that these were improperly admitted over their objection, defendants say that the value of the services rendered plaintiffs in connection with the garage was really immaterial because there was no question involved as to that building, and that the admission of these exhibits tended to mislead the jury. We think this contention cannot be sustained because the oral contract entered into between the parties provided that plaintiffs should render the architectural services for both buildings and, according to defendants' contention, were to secure the loan of sufficient money to pay for the cost of both, and necessarily evidence as to both buildings was in the case.

Exhibit 31 is a set of plans for the construction of the apartment building; Exhibit 23 was specifications for masonry and other work on the proposed building; and Exhibit 25 contained specifications for pipe, mechanical trades and electric work to be used in the construction of the apartment building. The objection was

that they did not appear to be the original or best evidence, and that these documents would tend to lead the jury to believe that a vast amount of work had been done by plaintiffs on the project. Since these documents were evidence of some of the services performed by plaintiffs on the apartment building, we think they were properly admitted in evidence. Plaintiffs were seeking to recover the reasonable value of the services they had performed and therefore they had a right to show the work that was done.

Exhibit 27 was a tabulation of bids received from a number of contractors by plaintiffs for the construction of the buildings. Plaintiff Schmidt testified that this tabulation was prepared in the presence of defendant Eugene Huguelst, when the bids were opened. We think there was no error in admitting it in evidence.

Exhibit 33 was an office memorandum made in plaintiffs' office by one of plaintiffs' office men. It purports to be a memorandum of a conference held in plaintiffs' office on the apartment building, concerning bids received from contractors. In this exhibit it is stated that plaintiffs were authorized to advise C.A. Klooster, the contractor, "that subject to 'their Huguelst Bros. completing satisfactory financial arrangements regarding building loan, contract would be awarded to Mr. Klooster for the construction of the building.'" The objection is that it was a self-serving memorandum made by one of the plaintiffs' own agents and therefore inadmissible. The evidence shows that a copy of this memorandum was sent to Huguelst Bros. and they admit its receipt. We are of opinion, therefore, that it was admissible as it might tend to bring to defendants' notice that plaintiffs were taking the position that defendants were required to procure the loan to secure the erection of the building.

Exhibit 40 was also an office memorandum made by one of the plaintiffs' employees and addressed to plaintiff Richard E. Schmidt,

that they did not intend to be the subject of such evidence, and that these documents would tend to show the fact in evidence that a great amount of work had been done by plaintiffs in the project.

Since these documents were submitted at some of the previous hearings by plaintiffs as the agreement failed, so that they were properly admitted in evidence. Plaintiffs were seeking to recover the reasonable value of the services they had rendered and those that they had a right to show the work that was done.

Exhibit IV was a tabulation of bills received from a number of contractors by plaintiffs for the construction of the building. Plaintiff's Exhibit testified that this tabulation was prepared in the presence of defendant's counsel, and the bills were correct. He said that there was no error in including it in evidence.

Exhibit V was an office memorandum made by plaintiffs' office by one of plaintiffs' office men. It appeared to be a memorandum of a conference held in plaintiffs' office on the subject of building, concerning the received from defendant. In this exhibit it is stated that plaintiffs were authorized to receive \$10,000. The defendant, "that exhibit of 'local' charges that plaintiffs called 'financial statements' covering building work, would be subject to Mr. Johnson for the defendant.

Plaintiffs testified that the objection is that it was a bill-keeping memorandum made by one of the plaintiffs' own agents and that it was not a bill. The witness there was a copy of this memorandum was made in duplicate bills. One was given to the defendant. He was of opinion, however, that it was not a bill as it did not tend to show the 'work' done by plaintiffs' was being done. The position that defendant was taking in producing the bills to the building of the building.

Exhibit VI was also an office memorandum made by one of the plaintiffs' employees and submitted as plaintiffs' Exhibit.

in which it was stated that Mr. Mayer, another of plaintiffs' employee, advised the employee making the memorandum that defendant Eugene Huguelet had telephoned that he had not yet completed financial arrangements for the building loan and that the further driving of piles for the apartment building should be stopped. This was obviously a self-serving declaration and clearly inadmissible if a proper objection had been made. The memorandum had not been seen by or brought to the attention of any of the defendants. When it was offered counsel for defendants objected - "I object to this line of statement that counsel is making about what it is. The document speak for itself." After some further colloquy between court and counsel, counsel for defendant objected that it was inadmissible because the answer called for a conclusion. The objection now contended for, namely, that it was a self-serving declaration, was in no way made on the hearing and it is elementary that the objection cannot be made for the first time in this court.

Exhibit 41 is also an office memorandum made by one of plaintiffs' employees in plaintiffs' office. It was addressed to Richard B. Schmidt. In this memorandum it was stated, "Mr. Huguelet advised Mr. Mayer (plaintiffs' employee) that nothing definite had been decided regarding the building loan." When this exhibit was offered, counsel for defendant stated: "I will have to make an objection to that office memo if the court please." Counsel for plaintiff asked, "Will you state what it is Mr. Schmidt?" Counsel for defendant, "I object to that question." The Court, "He may answer." The witness then answered that it was an office memorandum made in plaintiffs' office. The document was offered and counsel for defendants stated, "I move that testimony be stricken, just the offer relative to Exhibit 41." The motion was overruled and the exhibit admitted. From the foregoing it appears that no specific objection was pointed out and it cannot now be urged

[illegible]

that it was a self-serving declaration and therefore inadmissible. Moreover, Exhibit 41 was afterward introduced by defendants. Obviously they are now in no position to complain that this exhibit was erroneously admitted.

If the proper objections had been made, obviously these memoranda, made by some of plaintiffs' employees in plaintiffs' office, which were of a self-serving nature and which had not been brought to the attention of defendants, were clearly inadmissible. City of Chicago v. McKechney, 205 Ill. 372. But no such objection was pointed out on the hearing, and such objections are not now available to defendants.

Plaintiffs in closing their proof called plaintiff Richard E. Schmidt in rebuttal. He was asked by plaintiffs' counsel whether he had stated to Eugene Huguélet or any of defendants that if he did not secure a loan for them there would be no charge for plaintiffs' architectural services. He answered, "I never said that. That story is a complete fabrication." Counsel for defendants, "I ask that the answer be stricken out as not responsive to the question." The Court, "It may stand. ***" Counsel for defendants, "Does the Court mean to say that his conclusion that it is a lie, a complete fabrication, stands?" The Court, "Yes." Complaint is made that this action of the court was erroneously prejudicial, that it was for the jury to determine where the truth lay on this vital question, and that the court, by its ruling, gave its endorsement to the witness' testimony when he said the story was a complete fabrication. Under the procedure in this State it is obvious that the ruling of the court was wrong, but it is not every error that will warrant a reversal of the judgment. The witness, Schmidt, had previously testified that the agreement between the parties was that plaintiffs were to be paid for architectural services which they were to render without condition.

This was in direct conflict with the testimony of the three Huguelets, as above stated. We think the jury understood the issue clearly, and while the ruling was erroneous we think it was not of such a character, in view of the record, as to warrant us in disturbing the judgment.

Plaintiff Richard M. Schmidt testifies as to what was said and done in many particulars, refreshing his recollection from his diary, and then his diary was admitted in corroboration of his testimony. The diary, if objected to, would have been inadmissible. Reich v. Pearson, 219 Ill. 488, and authorities there cited.

Defendants further contend that the court erred in overruling their motion for a new trial for the reason that the verdict was not properly returned by the jury into court. The record discloses that when the jury retired to consider of its verdict it was agreed in open court that when the jury reached an agreement it might return a sealed verdict and be permitted to then separate, and an order was entered accordingly on the 27th of November. Some time after the adjournment of court for that day the jury delivered its signed and sealed verdict, apparently to the clerk or bailiff, and on November 28th the verdict was presented to the court, opened and read, but the members of the jury were not present. Thereupon counsel for defendants objected to the entering of the verdict because he wished to poll the jury. This objection was overruled, the court stating he understood the procedure to be that when it was agreed a sealed verdict might be returned, it was unnecessary for the members of the jury to be present in court. Four days afterward the court again summoned the members of the jury and they appeared in open court on December 1st, when all parties were present. The court stated that he had summoned the jury back so that counsel for defendants might have a chance to poll them. The verdict was again read and the court addressed the

[illegible]

His father is a well-known and successful business man and his mother is a well-known and successful business woman. He is a well-known and successful business man and his mother is a well-known and successful business woman.

— 1900 —

Downloaded by [University of California, San Diego] on 04/06/15. Copyright material. See http://www.tandem.co.uk/JOURNALS/permissions for more information.

100-443887-100

THE NEW YORK PUBLIC LIBRARY
ASTOR LENOX TILDEN FOUNDATION
500 5TH AVENUE
NEW YORK 17, N.Y.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Downloaded at Indiana Univ Lib on May 11, 2015 State Univ of N-York

... ..

map. According to the 1970 and 1980 censuses, the population of the area was 1,000 and 1,200 respectively.

107-114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931,

Printed by the U.S. Government Printing Office, Washington, D.C.

Placed this in reference to how different the work would be if the

...I have been very busy and I have not had time to write you for some time. I have been very busy and I have not had time to write you for some time.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-14-2010 BY 60322 UCBAW/STP

Page 10 of 10 (continued) All information on this page is confidential.

—and how it is, in fact, a very different matter.

RECEIVED FOR THE RECORDS OF THE HOUSE OF REPRESENTATIVES

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

THE UNIVERSITY OF CHICAGO PRESS

1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 26

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

all large like bunch and low fast along road. Flowers red. 1200

jury and said, "Is this your verdict, gentlemen?" and the jurors replied that it was. The court then asked defendants' counsel if he desired to poll the jury individually. Counsel replied that he did not want to waive any of his rights and that he would not then poll the jury. The jury was then discharged. While the members of the jury should have returned on November 28th, when their verdict was opened and read, in view of what took place as above stated, this was but an irregularity which we think did not prejudicially affect defendants. Cleveland, Cincinnati, Chicago & St. L. Ry. Co. v. Monaghan, 140 Ill. 474.

Plaintiffs claimed more than \$23,000. The jury returned a verdict for \$16,500. Without going into several items of plaintiffs' claim in detail, we think defendants cannot complain because plaintiffs did not receive all that they were claiming.

The judgment of the Circuit court of Cook county is affirmed.

JUDGMENT AFFIRMED.

McSurely, P. J., and Hatchett, J., concur.

[illegible][illegible]

SYNOPSIS: TOWNSHIP

1950-1951, 1952-1953, 1954-1955, 1956-1957, 1958-1959, 1960-1961, 1962-1963, 1964-1965, 1966-1967, 1968-1969, 1970-1971, 1972-1973, 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 26

37794

THE PYLZ-NATIONAL COMPANY;
a corporation,

(Complainant) Defendant in Error,

v.

GEORGE RACKY, et al.,

(Defendants) Plaintiff in Error.

57
H
ERROR TO

CIRCUIT COURT

COOK COUNTY.

282 I.A. 631²

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

On November 10th, 1933, a decree was entered in the Circuit Court of Cook County in a proceeding brought by complainant to foreclose a mortgage trust deed on certain real estate, given to secure the payment of a series of notes aggregating the sum of \$19,000.00. An answer to the bill was filed by the defendant, George Racky, and the matter was referred to a Master in Chancery to take proofs and report his findings. The Master made his report and found that there was due complainant for the debt and costs, the sum of \$19,999.31, which, together with the solicitor's fees allowed, amounting to \$1,100.00, made a total of \$21,099.31. Objections were filed to the Master's report, which were overruled. The objections taken before the Master were allowed to stand as exceptions to the report. Upon a hearing by the court, the exceptions were overruled, and a decree entered finding the amount due, as stated, and ordering the sale of the property. By the writ of error herein, defendant, George Racky, seeks the reversal of this decree.

By the answer of this defendant, he alleges that complainant is organized under the laws of the State of New Jersey and he admits the execution, delivery and ownership of the notes, as alleged in the bill but states that he does not admit that complainant has been authorized to do business in Illinois, and avers that the act

NOTES

THE STATE OF NEW YORK
IN SENATE

(Complaints) Defendants in Error

v.

GEORGE BERRY, et al.,

(Defendants) Plaintiffs in Error.

881 I.A. 831

Opinion filed Nov. 20, 1935

On November 19th, 1935, a decree was entered in the Circuit Court of Cook County in a proceeding brought by complaint to foreclose a mortgage deed on certain real estate, given to secure the payment of a series of notes aggregating the sum of \$12,000.00. An answer to the bill was filed by the defendant, George Berry, and the matter was referred to a Master in Chancery to take proofs and report his findings. The Master made his report and found that there was due complaint for the debt and costs, the sum of \$12,000.00, which, together with the plaintiff's fees allowed, amounting to \$1,100.00, made a total of \$13,100.00. Objections were filed to the Master's report, which were overruled. The objections taken before the Master were allowed to stand as exceptions to the report. Upon a hearing by the court, the same were overruled, and a decree entered finding the amount due, as stated, and ordering the sale of the property. By the sale of this estate, defendant, George Berry, seeks the payment of this

decree. By the answer of this defendant, he alleges that complaint is improper under the laws of the State of New York and he denies the plaintiff's liability and ownership of the same, as alleged in the bill and claims that he has not paid any consideration for same and wishes to do business in Illinois, and that such law

of complainant in taking and receiving the mortgage is ultra vires, contrary to the laws of this State, and that complainant has no right of action.

The Master found among other things, that the complainant, the Fyle-National Company, a corporation, has a valid and subsisting lien upon the mortgaged premises for the total amount due and owing to it as aforesaid; and that the rights and interests of all the other parties to the cause in and to said premises are subsequent, subject and inferior to said complainant's lien under ~~the~~ trust deed, and that complainant is entitled to foreclosure of the trust deed, and to have the mortgaged premises sold under the direction of the Court for the purpose of satisfying its said lien; that the Fyle-National Company, is a corporation incorporated under the laws of the State of New Jersey; that its charter was filed in the Secretary of State's Office of the State of Illinois on January 31st, 1897, under the name, The Fyle-National Electric Headlight Company, which has since been changed to the Fyle-National Company; that the corporation is empowered to purchase or otherwise acquire, and to hold, sell, assign, transfer, pledge, exchange or otherwise dispose of bonds, mortgages, debentures and obligations, and to exercise in respect to all such property any and all the rights, powers and privileges of individual owners thereof. On August 31, 1897, plaintiff was licensed to do business in the State of Illinois for 99 years from August 31, 1897. No question is raised as to the extent of the charter powers conferred upon complainant by the State of New Jersey, nor is objection made as to the Master's finding in this regard.

As we understand it, defendants' contention is that because the mortgage is owned and held by a New Jersey corporation, it cannot have the relief prayed, and that because complainant is such a foreign corporation, the act of "taking of the mortgage" by it is

of complaint is being and receiving for the purpose of making
complaint to the laws of this State, and such complaint has no
right of action.

The Master found many other things, that the complainant,
the Tyle-National Company, a corporation, was a valid and subsisting
lien upon the mortgages granted for the year 1900 and the year
to it as aforesaid; and that the rights and interests of all the
other parties to the same be kept intact and undisturbed;
subject and inalienable as said complainant's lien under its bond,
and that complainant is entitled to foreclosure of the trust deed,
and to have the mortgages granted under the direction of the
Court for the purpose of satisfying its said lien; that the Tyle-
National Company, is a corporation incorporated under the laws of
the State of New Jersey; that its charter was filed in the Secretary
of State's Office of the State of Illinois on January 21st, 1907,
under the name, The Tyle-National Electric Lighting Company, which
has since been changed to the Tyle-National Company; that the corpo-
ration is empowered to purchase or otherwise acquire, and to hold,
sell, assign, transfer, lease, exchange or otherwise dispose of
bonds, mortgages, debentures and obligations, and to exercise in
respect to all such property any and all the rights, powers and
privileges of individual owners thereof. On August 21, 1907, Plaintiff
was licensed to do business in the State of Illinois for 30 years
from August 21, 1907. No restriction is placed as to the extent of the
charter power and such upon complainant by the State of New Jersey,
nor is objection made as to the Master's finding in this regard.
As we understand it, defendant's contention is that because
the mortgage is dated and held by a New Jersey corporation, it
cannot have the relief prayed, and that because complainant is now
a foreign corporation, the act of selling of the mortgage, it is

ultra vires. It is admitted that the complainant invested its money in this mortgage and the notes for which the mortgage was given as security, that the debt is due and unpaid, and it is not denied that complainant has the power, under its charter, to invest its money in notes and mortgages.

By "An Act to enable corporations in other states and countries to lend money in Illinois to enforce their securities and acquire title to real estate as security", approved May 24, 1897, (Oahill's Illinois Revised Statutes, 1933, Chapter 33, Paragraph 299, Section 1) it is provided that:

"Any corporation formed under the laws of any other state or country, and authorized by its charter to invest or loan money, may invest or loan money in this State. And any such corporation, that may have invested or lent money as aforesaid, may have the same rights and powers for the recovery thereof, subject to the same penalties for usury, as private persons, citizens of this State; and when a sale is made under any judgment, decree or power in a mortgage or deed, such corporation may purchase, in its corporate name, the property offered for sale, and become vested with the title wherever a natural person might do so in like cases: Provided, however, that all real estate so purchased by any such corporation in satisfaction of any such liability or indebtedness shall be offered at public auction, at least once every year, at the door of the court house of the county wherein the same may be situated, or on the premises so to be sold, after giving notice thereof for at least four consecutive weeks in some newspaper of general circulation, published in said county; and if there be no such newspaper published therein, then in the nearest adjacent county where such newspaper is published; and said real estate shall be sold whenever the price offered for it is not less than the claim of such corporation, including all interest, costs, and other expenses: And, provided, further, that in case such corporation shall not, within the period of five years after acquiring such title, sell such lands, either at public or private sale, as aforesaid, it shall be the duty of the State's Attorney to proceed by information, in the name of the People of the State of Illinois, against such corporation in the circuit court of the county within which such land so neglected to be sold, shall be situated, and such court shall have jurisdiction to hear and determine the fact, and to order the sale of such land or real estate, at such time and place, subject to such rules, as the court shall establish."

the money in notes and stamps.

100, Section 1) is in provided that:

[illegible]

The statute cited by us is not mentioned in either of the elaborate briefs filed in the cause.

In view of the powers granted to the complainant corporation and of the fact that it is licensed to do business in Illinois, and that there is an entire absence of any legal or equitable defense, we hold that the defendants' contentions are without merit, and that the decree of the Circuit Court of Cook County should be and it is affirmed.

AFFIRMED.

HEBEL, J. CONCURS,
DENIS E. SULLIVAN, J. DID NOT TAKE PART.

The statute cited by us is not mentioned in either of these reports

which filed in the case.

In view of the reasons given in the complaint covering

tion and of the fact that it is licensed to do business in Illinois,

and that there is an entire absence of any legal or equitable

interest, we hold that the defendants' contention was without

merit, and that the decree of the Circuit Court of Cook County

should be and it is affirmed.

WITNESSED

THOMAS A. COCHRAN,
JUDGE OF THE CIRCUIT COURT OF COOK COUNTY.

37832

JOHN CUMMINGS LINDOP REAL ESTATE,
INC., a corporation,

(Plaintiff) Appellee,

v.

BERWYN ODD FELLOWS TEMPLE ASSOCIATION,
a corporation,

(Defendant) Appellant.

APPEAL FROM

CIRCUIT COURT

COOK COUNTY.

282 I.A. 631

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

On March 29th, 1932, a judgment was obtained in the court of a Cook County Justice of the Peace, by John Cummings Lindop Real Estate, Inc., a corporation, plaintiff, against Berwyn Odd Fellows Temple Association, a corporation, defendant, for the sum of \$330.00 and costs of suit. An appeal bond of the defendant, approved by the Justice of the Peace, before whom the case was tried, together with a transcript of the proceedings of the Justice of the Peace, was filed in the office of the Clerk of the Circuit Court of Cook County on April 31st, 1932. On May 13th, 1932, Joseph M. Schachner filed his appearance in the Circuit Court as attorney for the plaintiff. On August 9th, 1932, the following document was filed in the office of the Clerk of the Circuit Court of Cook County:

"CIRCUIT COURT OF COOK COUNTY

JOHN CUMMINGS LINDOP REAL ESTATE CORP. Gen. No. B 240231

vs.

BERWYN ODD FELLOWS TEMPLE ASSN.

To Byron C. Thorpe,

Attorney (or Solicitor) for _____.

You are hereby notified that John Cummings Lindop Real Estate Corp. desires the above entitled case to be placed upon the trial calendar and shall file this notice for the purpose pursuant to the rules of the Court.

Jos. M. Schachner
Attorney for Plaintiff

JOHN SUMMERS, Plaintiff,
vs.
JOHN SUMMERS, Defendant.

(Plaintiff's Exhibit)

JOHN SUMMERS, Plaintiff,
vs.
JOHN SUMMERS, Defendant.

(Plaintiff's Exhibit)

Opinion filed Nov. 20, 1935

MR. SUMMERS, Plaintiff, and SUMMERS, Defendant, the parties to the case.

On March 20th, 1935, a judgment was entered in the case

of a Cook County Justice of the Peace, by John Summers, Plaintiff,

vs. John Summers, Defendant, a corporation, Plaintiff, against SUMMERS, Defendant.

John Summers, Plaintiff, a corporation, Defendant, for the sum

of \$350.00 and costs of suit. In special bond of the defendant,

approved by the Justice of the Peace, before whom the case was

tried, together with a transcript of the proceedings of the Justice

of the Peace, was filed in the office of the Clerk of the Circuit

Court of Cook County on April 1st, 1935. On May 1st, 1935,

Joseph M. Robinson filed his appearance in the Circuit Court as

attorney for the Plaintiff. On August 20th, 1935, the following

document was filed in the office of the Clerk of the Circuit Court

of Cook County:

"CIRCUIT COURT OF COOK COUNTY

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

vs.

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

To appear & answer,

Attorney (or solicitor) for

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

JOHN SUMMERS, Plaintiff, vs. JOHN SUMMERS, Defendant.

Attorney for Plaintiff

882 I.A. 681

Received a copy of the above notice this 8th day of August A. D. 1932.

Byron O. Thorpe
Attorney for Defendant G. V.

STATE OF ILLINOIS)
COUNTY OF COOK) SS

In the Circuit Court of Cook County

Joseph M. Schachner, being duly sworn deposes and says that he is the attorney of record for the Plaintiff in the above entitled cause that he has caused the notice for trial to be served upon Byron O. Thorpe, attorney for Defendant, that he is ready for trial in this cause and expects to be ready whenever this cause shall be reached for trial.

Joseph M. Schachner

Sworn to before me this

8th day of August, A. D. 1932,

Millard C. Lindsay, Notary Public."

The record does not indicate when the cause was placed on the trial calendar of the Circuit Court, but in the petition filed by defendant, hereinafter referred to, it is recited that it was on August 9th, 1932, that this took place. This is not denied.

On September 20th, 1932, Cheney, Evans & Peterson entered their appearance in the Circuit Court of Cook County as attorneys for defendant.

On April 5th, 1934, the following order was entered in the Circuit Court:

"This cause being called for trial and the defendant failing to prosecute its appeal in this behalf, on motion of the attorney for the plaintiff, it is ordered that said appeal be and the same is hereby dismissed at defendant's costs. Therefore, it is considered by the court that the plaintiff do have and recover of and from the defendant, Berwyn Odd Fellows Temple Association, its costs and charges in this behalf expended, and have execution therefor."

On July 6th, 1934, defendant, by its attorneys, Cheney, Evans & Peterson, filed a written motion in the Circuit Court wherein and whereby it was moved that the order dismissing the appeal in the cause for want of prosecution, be vacated, and that the judgment

Received a copy of the above notice this 25th day of August A. D. 1932.

Wm. G. Thorne
Attorney for Defendant U. V.

STATE OF ILLINOIS)
COUNTY OF COOK) ss
In the Circuit Court of Cook County

Joseph M. Schaeffer, being duly sworn deposes and says that he is attorney at law and is admitted to practice in the above entitled cause that he has caused the notice for trial to be served upon Wm. G. Thorne, attorney for Defendant, that he is ready for trial in this cause and expects to be ready whenever this cause shall be reached for trial.

Joseph M. Schaeffer

Sworn to before me this

25th day of August, A. D. 1932.

William G. Thorne, Attorney for Plaintiff.

The record does not indicate when the cause was placed on the trial calendar of the Circuit Court, but in the petition filed by defendant,

hereinafter referred to, it is recited that it was on August 25th,

1932, that this took place. This is not denied.

On September 25th, 1932, Cheney, Wynn & Peterson entered

their appearance in the Circuit Court of Cook County as attorneys

for defendant.

On April 25th, 1934, the following order was entered in the

Circuit Court:

"This cause being called for trial and the defendant failing to prosecute the same in this behalf, on motion of the attorney for the plaintiff, it is ordered that said cause be and the same is hereby dismissed as defendant's cause. Hereafter, it is so considered by the court and the plaintiff to have and recover of and from the defendant, the costs and charges herein and before taxed, and any execution granted."

On July 25th, 1934, defendant, by its attorneys, Wynn,

Cheney & Peterson, filed a written motion in the Circuit Court wherein

was stated it was moved that the order dismissing the appeal in

the cause for want of prosecution, be vacated, and that the judgment

entered therein be set aside, and as grounds for such motion, allege the following: that the transcript of the Justice of the Peace, from whom said appeal was taken, was filed in the office of the Clerk of the Circuit Court by the said Justice of the Peace, and that Cheney & Peterson entered their appearance as attorneys for the defendant therein; that thereafter on, to-wit: the 9th day of August, 1932, the said cause was placed on the trial calendar upon a certain notice addressed to one Byron G. Thorpe, as attorney (or solicitor) and that no notice was given to the defendant, Berwyn Odd Fellows Temple Association, or to Cheney & Peterson, in compliance with Rule 23 of this court then in force and effect; that a copy of Rule 23 of said court is hereto attached and made a part hereof; that the defendant has a good defense on the merits to the claim of the plaintiff, to-wit: that the defendant did not employ the plaintiff to render any service for the defendant, as alleged in plaintiff's claim, and that the plaintiff did not render under the defendant any service, as alleged in the plaintiff's statement of claim, and that, therefore, the defendant is not indebted to the plaintiff on the claim of the plaintiff.

On July 9th, 1935, the court entered an order denying the motion to vacate the order dismissing the appeal. It is from this order that the appeal herein is being prosecuted.

Sections 1 and 2 of Rule 23 of the Circuit Court of Cook County provide:

"The practice of preparing printed law and chancery trial calendars for the September term of each year is hereby discontinued. In lieu thereof each Judge shall cause to be prepared from time to time as the exigencies of business require a trial calendar of causes assigned to him that have been noticed for trial in the manner hereinafter stated; and no cause shall appear on the trial calendar of any Judge that has not been so noticed for trial.

entered therein as set aside, and as grounds for such action, allege the following: that the transcript of the Justice of the Peace, from whom such appeal was taken, was filed in the office of the Clerk of the Circuit Court by the said Justice of the Peace, and that Cheney & Peterson entered their appearance as attorneys for the defendant therein; that thereafter on, to-wit: the 25th day of August, 1902, the said cause was placed on the trial calendar upon a certain notice addressed to one Byron E. Thompson, an attorney (or solicitor) and that no notice was given to the defendant, Henry C. Bellows Lewis Lewis Association, or to Cheney & Peterson, in compliance with Rule 22 of this court then in force and effect; that a copy of Rule 22 of said court is hereto attached and made a part hereof; that the defendant had a good defense on the merits to the claim of the plaintiff, to-wit: that the defendant did not employ the plaintiff to render any services for the defendant, as alleged in plaintiff's claim, and that the plaintiff did not render under the defendant any services, as alleged in the plaintiff's statement of claim; and that, therefore, the defendant is not indebted to the plaintiff on the claim of the plaintiff.

On July 25th, 1902, the court entered an order denying the motion to vacate the order dismissing the appeal. It is from this order that the appeal herein is being prosecuted.

Sections 1 and 2 of Rule 22 of the Circuit Court of Cook

County provide:

"The practice of preparing written law and testimony for trial is prohibited for the September term of each year in Cook County. In this respect said law and testimony shall be prepared from time to time as the defendant at his own expense requires a trial calendar of cases to be prepared in his case have been noticed for trial in the manner prescribed; and no cases shall appear on the trial calendar of any large trial that have not been so noticed for trial."

At any time after a cause is at issue either party may serve upon the other a notice to the effect that he desires the cause placed upon the trial calendar of the Judge to whom it has been assigned. Such notice with proof or acknowledgement of service shall be filed with the minute clerk of the Judge, or with the Clerk of the Court during the summer recess, within five days after its service. In other respects such notice shall be governed by the provision of Rule 21 so far as applicable."

It is suggested that inasmuch as Byron C. Thorpe, who was served with notice that the cause would be placed on the trial calendar, had tried the case for defendant in the Justice court, and receipted for this notice as attorney for the defendant, that the notice given to him was sufficient. His appearance was not entered in the cause in the Circuit Court and an examination of the record in the Circuit Court by plaintiff would have disclosed this fact. The defendant had appeared in the Circuit Court by filing its bond.

In view of the fact that defendant was not served with notice that the cause would be placed on the trial calendar, as required by the rule of the Circuit Court, we are of the opinion that the case was not properly on such calendar when it was called for trial, and that the court was in error in dismissing the appeal. The order dismissing the appeal, is, therefore, reversed and the ^{is} cause ~~is~~ remanded for a trial.

REVERSED AND REMANDED.

HEBEL, J. CONCURS,
DENIS E. SULLIVAN, J. DID NOT TAKE PART.

At any time after a summons is served upon the party, the party may serve upon the other a notice to the effect that he desires the case placed upon the trial calendar of the Judge to whom it has been assigned. Such notice with proof of service of the notice shall be filed with the clerk of the court during the term, or with the clerk of the court during the summer recess, within five days after the service. In other respects such notice shall be governed by the provisions of Rule 31 as for a writ of habeas corpus.

It is suggested that inasmuch as upon a writ of habeas corpus, who was served with notice that the case would be placed on the trial calendar, had tried the case for defendant in the Justice Court, and received for this notice an attorney for the defendant, that the notice given to him was sufficient. His appearance was not entered in the cause in the Circuit Court and an examination of the record in the Circuit Court by plaintiff would have disclosed this fact. The defendant had appeared in the Circuit Court by filing the bond.

In view of the fact that defendant was not served with notice that the case would be placed on the trial calendar, as required by the rule of the Circuit Court, so one of the parties to the case was not properly on such calendar when it was called for trial, and that the court was in error in dismissing the appeal, the order dismissing the appeal, is, therefore, reversed and the cause remanded for a trial.

REVEREND AND HONORABLE

HENRY E. GULLIVER, J. CLERK OF COURT.
JAMES E. GULLIVER, J. CLERK OF COURT.

37864

PEOPLE OF THE STATE OF ILLINOIS,
ex rel, MICHAEL J. MULVEY, et al.,

(Petitioners) Appellees,

v.

CITY OF CHICAGO, a Municipal Corporation,

(Respondents) Appellants.

APPEAL FROM

CIRCUIT COURT

COOK COUNTY.

282 I.A. 631

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment of the Circuit Court of Cook County, by which the court ordered that a writ of mandamus issue forthwith directed against the defendants, Joseph P. Allman, Commissioner of Police, Robert B. Upham, City Comptroller, Edward J. Kelly, Mayor of the City of Chicago, and James A. Learns, City Treasurer, commanding them to properly certify certain pay deducted from the salaries of the petitioners, and to issue, or sign, checks or warrants therefor for certain amounts as set forth in the finding of the court, which is a part of such judgment order.

The petition in the cause was filed jointly by various police officers, who, in the petition are classified as "Sergeants", "Lieutenants", and "Patrolmen." It is alleged that the petitioners who are designated under the classified Civil Service of the City of Chicago as "Sergeants", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$2,900 per annum; that those designated under the classified Civil Service of the City of Chicago as "Lieutenants", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$3,200 per annum, and that those designated under the classified Civil Service of the City of Chicago as "Patrolmen", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$2,500 per annum.

It is further alleged that on July 10th, 1931, the City

IN SENATE
JANUARY 10, 1935

(Petitioners)

v.

CITY OF CHICAGO, a municipal corporation.

(Respondents)

Opinion filed Nov. 30, 1935

888 I.A. 681

MR. JUSTICE BRIDGES delivered the opinion of the court.

This is an appeal from a judgment of the Circuit Court of Cook County, by which the court ordered that a writ of mandamus issue directing against the defendant, Treasurer of Cook County, to pay to the petitioners, James J. Kelly, Mayor of the City of Chicago, and James A. McGuire, Treasurer, commanding them to properly certify certain pay demands from the salaries of the petitioners, and to issue, or sign, checks or warrants therefor for certain amounts as set forth in the finding of the court, which is a part of each judgment order.

The petition in the cause was filed jointly by various police officers, who, in the petition are classified as "Lieutenants", and "Patrolmen". It is alleged that the petitioners who are designated under the classified civil service of the City of Chicago as "Lieutenants", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$2,500 per annum; that those designated under the classified civil service of the City of Chicago as "Patrolmen", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$1,500 per annum; and that those designated under the classified civil service of the City of Chicago as "Patrolmen", had the salary of each fixed by the Annual Appropriation Bill of the City of Chicago for the year 1931 at the sum of \$1,500 per annum.

of Chicago adopted the following resolution:

"Whereas, On account of the delay in the payment of taxes due to the reassessment of 1930 and its reduction in loop valuations of over \$300,000,000, and the enormous interest charges which have accrued due to the borrowing of money in anticipation of taxes, and a shrinkage in other miscellaneous revenue, it is necessary to effect savings wherever possible, spreading such savings in an equitable manner; and

Whereas, The deduction of 14 days' pay from each City employe working on a per annum, monthly, weekly or per diem basis will effect a saving of approximately \$2,400,000; therefore,

Be it ordained by the City Council of the City of Chicago:

Section 1. That the heads of Departments, Boards, Committees and Commissions be and they are hereby authorized and directed, except as otherwise provided in this ordinance, to deduct one day's pay from all employes, who are paid on a per annum, monthly or weekly basis, who do not work on Sunday and are paid for Sunday, for a total not to exceed fourteen Sundays during the period from July 12, 1931, to December 31, 1931, and for all such employes, who at times work on Sundays but are given one day off in seven, to deduct one day's pay per week for their relief day for a total not to exceed 14 days during said period.

Section 2. That all per diem employes ordinarily employed 7 days per week shall be employed during the period from July 12, 1931, to October 17, 1931, not to exceed 6 days per week, those employes ordinarily employed 6 days per week shall be employed during said period not to exceed 5 days per week, and those employes ordinarily employed 5 days per week shall be employed during the period from July 12, 1931, to December 31, 1931, not to exceed 5 days per week.

Section 3. That all employes paid on a basis of a week's employment regularly comprising less than 7 days shall be allowed 1 day off per week without pay during the period from July 12, 1931, to December 31, 1931.

Section 4. That the Commissioner of Police be and he is hereby authorized and directed to deduct one day's pay from the members of the Police Department, designated as 'policemen' and who constitute the police force of the City of Chicago, for their 1 day relief in 7, for a total not to exceed 14 days, during the period from July 12, 1931, to December 31, 1931.

Section 5. That the Commissioner of Fire be and he is hereby authorized and directed to deduct one day's pay due all employes of the uniformed rank in the Fire Department for 1 day of their relief each week, for a total not to exceed 14 days, during the period from July 12, 1931, to December 31, 1931";

that pursuant to this ordinance of July 10th, 1931, the Commissioner of Police, after the month of June, 1931, deducted pay for 14 days from the salary pay checks of each of the petitioners without his consent; that the comptroller refused to certify payment for the

at Illinois School for the Deaf

[illegible][illegible]

100-441101-1000

a 10 third a no thing develops in fact. I believe
 such a need will be met by the development of the
 United States and the rest of the world. I believe
 that the world is moving in the right direction.

[illegible]

ALL employees of the railroad were notified by letter on May 1, 1961, that they were to be notified by letter on May 1, 1961, to

that pursuant to this ordinance of July 1934, 1935, the Commission of Public Safety, after the month of June, 1935, deducted pay for 15 days from the salary pay checks of each of the petitioners without any comment; that the commission refused to certify payment for the

same 14 days to the city treasurer, and that the treasurer refused to pay petitioners for the 14 days, although the petitioners had all performed the usual, customary and required services during such time. It is also alleged that the ordinance of July 10th, 1931, was illegal and invalid.

The prayer of the petition is that as to the sergeants, the defendants be commanded to certify the pay of the relators for the 14 days deducted and withheld from their respective pays during the last half of 1931 in the sum of \$111.30 each; that as to the lieutenants, each the sum of \$122.78, and as to the patrolmen, each the sum of \$95.90.

After a hearing, the court entered the order that the amounts alleged to be due to the various persons, as set forth in the petition, and found to be due, as to each individual petitioner, be paid, and that warrants on the Treasurer of the City of Chicago should be drawn by the proper officers which were named, for the various amounts found to be due.

Various defenses to the action were presented, but the one upon which defendants seem principally to rely, and which we deem worthy of serious consideration, is that the petition of the plaintiffs is insufficient, because it does not allege that at the time of the filing of the petition there was a sufficient fund appropriated for the payment of the deductions from petitioners' salaries to pay the same, and cite many cases in support of this contention. It is also insisted that petitioners must show that there were sufficient available funds at the time the petition was filed. The allegation in this regard, and as to these questions, is as follows:

"And petitioners further represent that at the time covering the period when the monies so deducted from

some 14 days to the city treasurer, and that the treasurer returned
to pay petitioners for the 14 days, although the petitioners had
all performed the usual, customary and required services during
such time. It is also alleged that the ordinance of July 19th, 1921,
was illegal and invalid.

The prayer of the petition is that as to the respondents,
the defendants be compelled to satisfy the pay of the petitioners for
the 14 days deducted and withheld from their respective pay during
the last half of 1921 in the sum of \$111.30 each; that as to the
respondents, each the sum of \$111.30, and as to the petitioners,
each the sum of \$22.26.

After hearing, the court entered the order that the
amounts alleged to be due to the various persons, as set forth in
the petition, and found to be due, as to each individual petitioner,
be paid, and that amounts on the treasurer of the City of Chicago
should be drawn by the proper officers which were named, for the
various amounts found to be due.

Various defenses to the action were presented, but the
one upon which defendants seem principally to rely, and which we
deem worthy of serious consideration, is that the petition of the
plaintiffs is insufficient, because it does not allege that at
the time of the filing of the petition there was a sufficient fund
appropriated for the payment of the defendants' fees and expenses,
or salaries to pay the same, and also many cases in support of this
contention. It is also insisted that petitioners must show that
there were sufficient available funds at the time the petition
was filed. The allegation in this regard, and so these

allegations, is as follows:

And petitioners further insist that at the time
aforesaid the fund was not available for

their pay and unlawfully withheld from them, and from thence hitherto, there were ample monies in the corporate fund of the Treasury of said City of Chicago, to pay petitioners out of funds appropriated for the Department of Police, of which they were members, unless same were illegally diverted or misappropriated from monies appropriated, without any fault on petitioners' part, but that defendants hereinafter named have failed and refused to make the necessary provision for and to pay the same, although often requested so to do."

As we read this allegation, we construe it to charge that the funds to pay these petitioners had been appropriated and were available at the time the petition was filed. The cause was heard upon the petition and the answer thereto, and considerable testimony was taken on the question as to whether or not there had been sufficient funds appropriated for the purpose of paying the full amount of petitioners' salaries.

Harry M. Doyle, Chief Clerk of the Comptroller's Office of the City of Chicago, testified in substance that the statement taken from the Comptroller's book of the appropriations and expenditures for the year ending December 31st, 1931, shows that for that year, the amount appropriated for the police department was \$15,741,105.99, the amount expended, \$15,363,126.64, and the amount of the appropriation unexpended was \$478,979.35, which, from all we can gather from the record, was in the corporate fund of the City of Chicago. On cross-examination, this witness was asked this question: "Q. As to the unexpended balance, did that include the deductions that were made under the July 10th ordinance?" An objection was made to this question by attorneys for the defendants, which was sustained by the court. The witness was then asked this question: "Q. Now, you have been reading from the corporate fund, now, is that it, of the City of Chicago?" "A. Yes." "Q. So that that money which was unexpended just remained in the corporate fund of the City of Chicago?" "A. I can't answer it that way."

This testimony indicates that the whole amount of salary for these various petitioners had been appropriated, and that there were ample funds available with which to pay the entire amount of the balance due on these salaries when the petition was filed. If this were not true, the defendants could readily have shown such fact, which they did not do.

Upon the showing made, we are of the opinion that the court was justified in ordering the writ of mandamus to issue, and the judgment of the Circuit Court of Cook County is, therefore, affirmed.

AFFIRMED.

HEBEL, J. ~~CONCURS~~
D. E. SULLIVAN DID NOT TAKE PART.

This testimony indicated that the whole amount of interest
the interest payment had been appropriated, and that there
was still some available for the interest amount of
the interest due on these notes when the interest was paid. It
was not true, the defendant could readily have shown that
fact, which they did not do.

Upon the showing made, we are of the opinion that the
court was justified in refusing the writ of mandamus to issue, and
the judgment of the District Court of Cook County is affirmed.
Affirmed.

REVEREND.

WILLIAM J. COCHRAN
J. H. KELLEY AND THE OTHERS.

37869

WILLIAM E. BORG, et al.,
(Plaintiffs) Appellants,
OSCAR F. FISCHER, et al.,
(Interpleaders) Appellants,
v.
HARRY FINEGOLD,
(Defendant) Appellee.

APPEAL FROM

CIRCUIT COURT

COOK COUNTY.

222 I.4. 691⁵

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

Suit was brought by plaintiffs against defendant in the Circuit Court of Cook County in an action of replevin to recover possession of certain notes, which one Harry C. Stern had hypothecated with defendant as security for the loan of \$2,000.00 obtained by Stern from the defendant. The judgment was for defendant.

The affidavit filed with the declaration in the cause recites in substance that the plaintiffs, William E. Borg, W. B. Frickett and Harold A. Tubby, as a committee for the protection of holders of notes sold through the Citizens State Bank of Chicago, were lawfully entitled to the possession of such notes, (describing them), and that on April 18th, 1933, the defendant, Harry Finegold, together with Julius L. Handelman and John Doe wrongfully took, and wrongfully detained, the said goods and chattels.

Defendant, Finegold, by Julius L. Handelman, his attorney, filed various pleas to the declaration, the substance of which is that Stern, who we infer was also a member of the committee referred to, was the owner and holder of the notes in question and lawfully entitled to possession of the same, and that on April 18th, 1933, Stern borrowed \$2,000.00 from the defendant, Finegold, and deposited \$20,000.00 of these notes as security for this loan.

This was brought by plaintiff against defendant in the
 Circuit Court of Cook County in an action of replevin to recover
 possession of certain notes, which one Henry E. Stern had hypothec-
 ated with defendant as security for the loan of \$2,000.00 obtained
 by Stern from the defendant. The judgment was for defendant.
 The affidavit filed with the decision in the case
 recited in substance that the plaintiff, William A. Henry, E. A.
 Trickett and Harold A. Luddy, as a committee for the protection of
 holders of notes sold through the Citizens State Bank of Chicago,
 were lawfully entitled to the possession of such notes, (describing
 them), and that on April 18th, 1931, the defendant, Henry E. Stern,
 together with Julius E. Mandelbaum and John Lee wrongfully took, and
 wrongfully detained, the said notes and certificate.
 Defendant, Kingolds, by Julius E. Mandelbaum, his attorney,
 filed various pleas to the decision, the substance of which is
 that Stern, who he inter was also a member of the committee referred
 to, was the owner and holder of the notes in question and lawfully
 entitled to possession of the same, and that on April 18th, 1931,
 Stern borrowed \$2,000.00 from the defendant, Kingolds, and deposited

The record indicates that various persons had purchased notes secured by mortgages from the Citizens State Bank of Chicago, and that this bank closed and ceased to do business in May, 1933. The committee referred to seems to have been self-appointed, and its function was to procure their notes from various of these note owners, for the purpose of protecting the holders as far as possible in their properties. Stern, as a member of the committee, acted as its secretary and kept the records of the committee.

A number of these notes were deposited by the owners with the committee, and Borg, one of the plaintiffs, testified in substance that when the notes were so deposited, they were turned over to Stern, who gave a receipt to the owner for the same, and that Stern, as already stated, hypothecated \$30,000.00 of such notes as security for the loan mentioned.

The various owners of the notes filed an interpleader in the cause, in which they set forth their ownership thereof. Stern defaulted in the payment of his note to the defendant, and is a fugitive from justice.

The defendant, Vinegold, testified that on April 19th, 1933, he made the loan to Stern, as alleged. He further testified in substance that prior to that time he had never done business with Stern; that he first met Stern with a man by the name of Weinhouse, who requested defendant to make the loan; that Weinhouse told the defendant that Stern was in the business of buying and selling bonds and that these notes belonged to him, Stern; that at the time the loan was made, he, the witness, had only seen Stern two or three times; that Stern, at that time, gave the witness an affidavit to the effect that these notes belonged to him; that he gave Stern cash; that since 1930 he, the witness, had had no visible means of support, but was supported by his children; that he secured the \$2,000.00

The record indicates that various persons had purchased notes secured by mortgages from the Citizens State Bank of Chicago, and that this bank closed and ceased to do business in May, 1933. The committee referred to above do have been self-incriminated, and its function was to procure their notes from various of these note owners, for the purpose of purchasing the notes as far as possible in their properties. Stern, as a member of the committee, acted as its secretary and kept the records of the committee. A number of these notes were deposited by the owner with the committee, and Stern, one of the plaintiffs, testified in substance that when the notes were so deposited, they were turned over to Stern, who gave a receipt to the owner for the same, and that Stern, as already stated, hypothecated \$20,000.00 of such notes as security for the loan mentioned. The various owners of the notes filed an intervention in the cause, in which they set forth their ownership thereof. Stern defaulted in the payment of his note to the defendant, and in a negative from Justice. The defendant, Vinograd, testified that on April 1933, 1933, he made the loan to Stern, as alleged. He further testified in substance that prior to that time he had never done business with Stern; that he first met Stern with a man by the name of Weinbaum, who requested Weinbaum to make the loan; that Weinbaum told the defendant that Stern was in the business of buying and selling bonds and that these notes belonged to him, Stern; that at the time the loan was made, he, the witness, had only seen Stern two or three times; that Stern, at that time, gave the witness an affidavit to the effect that these notes belonged to him; that he gave Stern cash; that since 1930 he, the witness, had had no visible means of support, but was supported by the witness; that he received the \$20,000.

loaned to Stern from his daughter. The further testimony of this witness was to the effect that Stern told him that there were some foreclosures on some of these notes, but that he, the witness, was not interested in that fact and that at the time he made the loan he knew that all of these notes were in default. Weinhouse was not produced as a witness.

It seems to be agreed by the parties that at the time these notes were hypothecated by Stern, \$6,000.00 thereof were due and unpaid, and that the makers were in default in a substantial amount in interest payments due on all of them. After a hearing by the court without a jury, the court found that at the time the property was taken from the defendant by the writ of replevin issued in the cause, that the property was rightfully held by the defendant as security for the debt, amounting to \$2,048.19, which included interest; that the defendant had suffered no damage by reason of the detention of the property, and it was ordered that if plaintiffs elected to and did pay the amount of the loan within twenty days from May 12th, 1934, together with interest thereon at 5% per annum until paid, that then and in that case the plaintiffs should have and retain the property, but that in default of such payment within the time mentioned, the defendant should recover of the plaintiffs the possession of the property by a writ of retorno habendo. The appeal is from this order.

The Supreme Court in Fawcett, Isham & Co. v. Caborn, Adams & Co., 32 Ill. 411, page 424, announced the following doctrine:

"The general rule of law, sanctioned by common sense, is, that no man can, by his sale, transfer to another the right of ownership in a thing wherein he himself had not the right of property, except, and this for the sake of sustaining the currency, in the instances of cash, bank bills, checks and notes payable to bearer or transferable by delivery in the ordinary course of business, to a person taking it, bona fide, and paying value for it."

...to ... from his daughter. The ... testimony of this ... was to the effect that ... there were some ... on some of these notes, but that he, the witness, was ... interested in that fact and that at the time he made the loan ... know that all of these notes were in

It seems to be agreed by the parties that at the time these notes were hypothecated by State, \$5,000.00 thereof were due and unpaid, and that the same were in default in a substantial amount in interest payments due on all of them. ... the court without a jury, the court found that at the time the property was taken from the defendant by the wife of ... in the course, that the property was rightfully held by the defendant as security for the debt, amounting to \$2,082.18, which included interest; that the defendant had suffered no damage by reason of the retention of the property, and it was ordered that it be ... to and did pay the amount of the loan within twenty days from May 18th, 1904, together with interest thereon at 6% per annum until paid, that then and in that case the plaintiff should have and retain the property, but that in default of such payment within the time mentioned, the defendant should receive of the plaintiff the possession of the property by a writ of habere facias. The ... is from this order.

The ... is
... 23rd ... 1904, announced the following decision:
"The general rule of law, mentioned by counsel ... that no man can, by his wife, transfer to another the right of ownership in a thing which he himself has not the right of property, except, and this for the sake of maintaining the ... in the instance of each, from wife, husband and ... notes ... by delivery in the ordinary course of business, to a person acting in good faith and paying value for the same."

The notes in question were made payable to bearer, so that it cannot be questioned but that title thereto could be conveyed by one having authority to make such conveyance, merely by delivery.

In Y. M. C. A. Gymnasium Co. v. Rockford National Bank, 179 Ill. 599, the Supreme Court said:

"It is well settled that such instruments (referring to promissory notes) endorsed in blank pass by delivery, the endorsement being treated as made to each subsequent transferee; also, that the negotiability of commercial paper does not cease with its maturity, but may still be negotiated by endorsement."

The evidence of plaintiffs' witnesses, which is not disputed, shows conclusively that Stern had no title to the notes in question, had no right to negotiate them, and that he had no rightful custody thereof, except for the purpose of safe-keeping.

In Merchants Loan & Trust Co. v. Welter, 305 Ill. 647, plaintiff brought an action in trover in the Cook County Circuit Court to recover damages for the unlawful conversion of a promissory note. Judgment for plaintiff was had in the Circuit Court, which judgment was affirmed by both the Appellate and Supreme Courts. The note in question was made payable to the maker, and by him endorsed, and was secured by deed of trust on real estate. The trustee in the deed, who was the agent for the owner, held the note and deed for the purpose of collecting the interest. The custodian of the note, the trustee in the trust deed, pledged the note to the Merchants Loan & Trust Company to secure his debt to that institution. In that case the Supreme Court held that "where a note was fraudulently put in circulation, *** it devolved on the pledgee or holder to show that it took the paper in good faith, for value, before maturity, in the usual course of business." Citing Hide and Leather Bank v. Alexander, 184 Ill. 416. See also Bright v. Brosseau, 73 Ill. 381; Charles v. Remick, 156 Ill. 327, and Hodson v. Eugene Glass Co. 156 Ill. 397.

The notes in question were made payable to bearer, so that it would be questioned that this title thereto could be conveyed by the holder without authority to make such conveyance, merely by delivery.

In re, J. B. Williams, et al., Trustees of the

175 Ill. 308, 100 Ill. 308, 100 Ill. 308, 100 Ill. 308

"It is well settled that such instruments (payable to bearer) are negotiable in their own right, and the holder thereof is entitled to the same as if they were negotiable; also, that the negotiability of commercial paper does not cease with its maturity, but may still be negotiated by endorsement."

The evidence of plaintiff's witnesses, which is not discussed, shows conclusively that there had no title to the notes in question, and no right to negotiate them, and that he had no rightful custody thereof, except for the purpose of safe-keeping.

In re, J. B. Williams, et al., Trustees of the

plaintiff brought an action in favor of the Bank of Chicago to recover damages for the wrongful conversion of a negotiable note. Judgment for plaintiff was had in the Circuit Court, which judgment was affirmed by both the appellate and supreme courts. The note in question was made payable to the order, and of him retained, and was secured by deed of trust on real estate. The trustee in the deed, who was the agent for the owner, said the note was held for the purpose of collecting the interest. The question of the note, the trustee in the deed held, signed the note in the name of the owner, and the owner is held to that liability. In that case the supreme court held that "where a note was transferred out in circulation," it is deemed on the signature of holder to have been in such the paper as good faith, for value, and negotiable, as the usual course of business." Ill. 111. 308, 100 Ill. 308, 100 Ill. 308, 100 Ill. 308

The negotiable Instruments Act (Illinois State Bar Stats. 1935, Section 72, page 2183), provides that "a holder in due course is a holder who has taken the instrument under the following conditions: (1) *** (2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact. (3) That he took it in good faith and for value. (4) That at the time it was negotiated to him, he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

The question arises as to whether or not defendant's knowledge of defaults in the payment of \$6,000.00 of the principal of these notes, and in the payments of interest on all of them, amounted to notice of dishonor, and whether, under the circumstances, defendant took them subject to any equities which might exist against them, and not in due course.

In National Bank of North America v. Kirby, 108 Mass. 497, page 501, the court said:

"If, as it is argued, it be true that the failure to pay interest ever as a matter of law amounts to a dishonor of a note, it can only affect one who has knowledge of that fact. Payment of interest is not always indorsed, and other evidence is often relied on to prove it. Want of indorsement does not apprise the party, to whom such note is transferred, that there has been no payment; and when the note is only taken as collateral, and accuracy is not required in ascertaining the amount due for interest, the fact that overdue interest is not indorsed might have slight influence in putting the purchaser upon his inquiry. It has indeed been held by this court, that a note, the principal of which is payable by installments, is overdue when the first installment is overdue and unpaid, and is thereby subject to all equities between the original parties. Vinton v. King, 4 Allen. 563."

Section 59 of the Negotiable Instruments Act already referred to, provides that "every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title in due course."

he claims acquired the title in due course."

whether it is the holder in good faith or not is immaterial, the

any person who has negotiated the instrument was defective, the

he a holder in due course; but when it is shown that the title of

retained to, provides that "every holder is deemed prima facie to

Section 89 of the Negotiable Instruments Act already

"Visakh v. Bank, & Allah, 1925."

by instalment, is overruled when the first instalment is

this court, that a note, the principal of which is payable

is not enforceable until the whole amount is paid by

the amount of the instalment, the first instalment is

as collateral, and recovery is not restricted to the instalment

these have been no payment, and when the whole is not paid

not enforce the whole, as when the whole is not paid, that

is often relied on to prove it. Want of instrument does

payment of instalment is not always enforceable, and other evidence

a note, it can only affect one who has knowledge of that fact.

interest over as a matter of law amounts to a discharge of

"It, as it is agreed, it is true that the failure to pay

page 301, the court said:

National Bank of North America v. Allen, 1925. 1925.

against them, and not in due course.

defendant took them subject to any equities which might exist

amounted to notice of discharge, and whether, under the circumstances,

of these notes, and in the payment of interest on all of them,

lodge of defendant in the payment of \$6,000.00 of the principal

The question arises as to whether or not defendant's know-

the person negotiating it."

notice of any indorsement in the instrument or defect in the title of

value. (4) That at the time it was negotiated to him, he had no

if such was the fact. (3) That he took it in good faith and for

overdue, and without notice that it had been previously dishonoured,

ditions: (1) (2) That he became the holder of it before it was

is a holder who has taken the instrument under the following con-

Section 73, page 2183), provides that "a holder in due course

The negotiable instrument for Illinois State Bank holds.

We are of the opinion that in view of all the circumstances, including the fact that defendant took these notes with knowledge that they were in default, he took them subject to any equities that existed against them, when they were hypothecated by him as security for the loan. The judgment of the Circuit Court is, therefore, ordered reversed. It is further ordered that judgment be entered here for plaintiffs to the effect that they shall recover and have possession of the property in dispute.

REVERSED.

HEBEL, J. AND DENIS E. SULLIVAN, J. CONCUR.

be one of the opinion that in view of all the circumstances,
looking the fact that defendant took these notes with knowledge
that they were in default, he took them subject to any rights that
existed against them, when they were hypothecated by him as security
for the loan. The judgment of the circuit court is, therefore,
ordered reversed. It is further ordered that judgment be entered
here for plaintiffs to the effect that they shall recover and
have possession of the property in dispute.

ATTORNEYS.

WILLIAM J. AND GEORGE E. SULLIVAN, JR. COUNSEL.

37872

E. RAY GRANT, Successor Trustee,

(Complainant) Appellee,

v.

RUSSELL FIREBAUGH, Individually and
as Trustee,

(Defendant) Appellant.

APPEAL FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 632¹

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

On Feb. 7th, 1934, E. Ray Grant, Successor Trustee, under a trust deed given to secure the payment of certain monies due and owing by one Antonio Bondi and paid to defendant, Russell Firebaugh, as the original trustee in the trust deed, filed a complaint in the Superior Court of Cook County, in which he alleged that said Firebaugh, as such original trustee, had taken possession of certain described real estate, the same being the real estate conveyed in the trust deed referred to, and that while in the possession of the property, Firebaugh had collected the sum of \$1,496.75 of rents, issues and profits derived from the property; that on January 20th, 1933, Firebaugh had resigned as such trustee and surrendered to Grant the premises described and all rights, title and interest in and to the same; that thereafter Grant demanded of Firebaugh that Firebaugh render an account of all of the monies so alleged to have been collected, but that Firebaugh retained the sum of \$14,629.00 of such sum, and refused to surrender the same to Grant. Firebaugh filed an answer to this petition, and upon the issues joined the court on July 5th, 1934, entered a decree in which it found that Firebaugh, as trustee, on or about February 1st, 1930, took possession of the property involved, operated the same, collected the rents and profits, and continued to do so until January 14th, 1933, and that during that time he became possessed of the sum of \$1,496.75 of rents, incomes and profits, from such property. The court further

E. WAY GRANT, Successor Trustee,

(Complainant) Appellee,

v.

RUSSELL WILKINSON, Individually and
as Trustee,

(Defendant) Appellant.

FILED HERE

CLERK OF DISTRICT COURT

COOK COUNTY.

2021.A.682

Opinion filed Nov. 20, 1935

MR. JUSTICE JUSTICE WILLIAM H. HARRIS, JR.

On Feb. 22, 1934, E. Way Grant, Successor Trustee, under

a trust deed given to secure the payment of certain notes and the
issue by one Antonio Bondi and paid to defendant, Russell Wilkinson,
as the original trustee in the first deed, filed a complaint in the

Superior Court of Cook County, in which he alleged that said
Wilkinson, as such original trustee, had taken possession of certain

described real estate, the same being the real estate conveyed in
the trust deed referred to, and that while in the possession of the
property, Wilkinson had collected the sum of \$1,433.75 of rents,

issues and profits derived from the property; that on January 29, 1934,
Wilkinson had resigned as such trustee and transferred to

Grant the premises described and all rights, title and interest in and
to the same; that thereafter Grant demanded of Wilkinson that

Wilkinson render an account of all of the monies so alleged to have
been collected, but that Wilkinson retained the sum of \$1,433.00 of

such sum, and refused to surrender the same to Grant. Wilkinson

filed an answer to this petition, and upon the answer joined the court
on July 22, 1934, entered a decree in which it found that Wilkinson,

as trustee, on or about February 1st, 1933, took possession of the

property involved, operated the same, collected the rents and

profits, and continued to do so until January 14th, 1934, and that

during that time he became possessed of the sum of \$1,433.75 of

rents, issues and profits, from such property. The court further

found in this decree of July 5th, 1934, that Firebaugh had retained, and failed to account for, and still had in his possession, the sum of \$14,629.00. In this same decree, the court ordered that Firebaugh, individually and as trustee, pay, or cause to be paid, to Grant as successor trustee, within ten days from the date of the order, the said sum of \$14,629.00, with interest thereon at the rate of 5% from and after February 28th, 1933, together with the costs of the suit, and that the court expressly reserved jurisdiction of the cause for the purpose of enforcing the decree.

The record indicates that frequent demands were made by Grant upon Firebaugh for an accounting and payment of the amount ordered to be paid by the court, but that the same remained unpaid. Thereafter, on August 4th, 1934, Grant filed a petition in the Superior Court of Cook County, in which he set forth the fact of the entry of the decree of July 5th, 1934, and the order for the payment of the \$14,629.00 by Firebaugh, but that Firebaugh had failed to comply with the decree in any part, and that the sum of money mentioned was still due and unpaid. The petition prayed that Firebaugh be held in contempt of court for failure to perform and obey the decree, and that he be punished for his failure in the regard mentioned.

On August 4th, 1934, the court entered a rule on Firebaugh to show cause, within seven days from that date, why he should not be punished for contempt of court for failure to obey and comply with the decree of the court entered on July 5th, 1934. On August 18th, 1934, the court entered an order in and by which it adjudged Firebaugh guilty of contempt of court for his refusal to obey the decree of the Superior Court entered July 5th, 1934, and that he be punished for such contempt by commitment to and imprisonment in the Common Jail of Cook County, Illinois, and that the clerk of the court forthwith issue a mittimus directed to the Sheriff of Cook County, requiring

Found in this decree of July 28th, 1884, that Wirthough had remained, and failed to account for, and still had in his possession, the sum of \$14,823.00. In this same decree, the court ordered that Wirthough, individually and as trustee, pay, or cause to be paid, to Grant as executor trustee, within ten days from the date of the order, the said sum of \$14,823.00, with interest thereon at the rate of 5% from and after February 28th, 1883, together with the costs of the suit, and that the court expressly reserved jurisdiction of the cause for the purpose of enforcing the decree.

The record indicates that frequent demands were made by Grant upon Wirthough for an accounting and payment of the money ordered to be paid by the court, but that the same remained unpaid. Thereafter, on August 4th, 1884, Grant filed a petition in the Superior Court of Cook County, in which he set forth the facts of the entry of the decree of July 28th, 1884, and the order for the payment of the \$14,823.00 by Wirthough, but that Wirthough had failed to comply with the decree in any part, and that the sum of money mentioned was still due and unpaid. The petition prayed that Wirthough be held in contempt of court for failure to perform and obey the decree, and that he be punished for his failure in the manner mentioned.

On August 4th, 1884, the court entered a rule on Wirthough to show cause, within seven days from that date, why he should not be punished for contempt of court for failure to obey and comply with the decree of the court entered on July 28th, 1884. On August 12th, 1884, the court entered an order in and by which it adjudged Wirthough guilty of contempt of court for his refusal to obey the decree of the Superior Court entered July 28th, 1884, and that he be punished for such contempt by commitment to and imprisonment in the common jail at Cook County, Illinois, and that the clerk of the court forthwith issue a writ of habeas corpus to the Sheriff of Cook County, directing

the Sheriff to forthwith take into custody the said Russel Firebaugh and incarcerate him in the Common Jail of Cook County, and keep him thus incarcerated until he should pay the plaintiff, E. Ray Grant, as successor trustee, the sum of \$14,629.00, as required by the final decree entered in the cause on July 5th, 1934, as amended, or until Firebaugh be otherwise discharged by due process of the law. It is from this order that this appeal is being prosecuted.

On August 11th, 1934, Firebaugh filed an answer and return, in which he alleged inter alia that he had no money or funds with which to make the payment ordered by the court, and that he had no means of raising such money; that he did not retain and did not at any time have possession of the sum of \$14,629.00 mentioned; that he did not collect any of the rents or incomes from the property, as charged, and averred that an institution known as the Bond & Mortgage Company was in charge of and had managed the property during the period mentioned, and had collected all the rents and profits therefrom. In this answer, Firebaugh also alleges that the money so held by the Bond & Mortgage Company had been turned over to the Receiver of that institution, appointed by an order of the District Court of the United States.

An appeal was taken to this court from the decree of July 5th, 1934, which decree was affirmed on November 5th, 1935, in case number 37971. In its opinion, this court said: "The decree entered is fully justified under the facts and the law. As shown by the opinion in that case, the proceeding here is nothing more than an effort to have the trial court and this court relitigate the matters already determined by the decree of the Superior Court and affirmed by this court.

In a similar proceeding, Harrigan v. Stone, 237 Ill. App. 314, this court said:

"The effect of the affidavit filed by Harrigan is a suggestion on his part to relitigate the subject matter of the prior proceedings. It is neither an accounting nor an offer to turn over the proceeds.

"The effect of the affidavit filed by Mortenson is a suggestion as to how to relieve the subject matter of the prior proceedings. It is neither an acknowledgment nor an offer to turn over the proceeds."

and, with every view:

In a similar proceeding, Winkler v. Bink, 207 Ill. App.

aligned by the decree of the Circuit Court and affirmed by this court. The trial court and this court relitigate the matter already determined in that case. The proceeding here is nothing more than an effort to have installed under the facts and the law. It is known by the opinion in Winkler. In the opinion, this court said: "The decree entered is fully affirmed, which decree was affirmed on November 23d, 1935, in case number 1934, which decree was taken to this court from the decree of July 1935."

An appeal was taken to this court from the decree of July 1935, which was affirmed by an order of the District Court of the United States. A Mortgage Company had been turned over to the Receiver of that institution, which also alleges that the money was held by the Bank. In this matter, and had collected all the rents and profits therefrom. It was in charge of and had managed the property during the period mentioned and asserted that an institution known as the Bond & Mortgage Company had collected any of the rents or income from the property, as charged, time have possession of the sum of \$14,823.00 mentioned; that he did mean of retaining such money; that he did not retain and did not at any which to make the payment ordered by the court, and that he had no in which he alleged that he had no money or funds with

On August 15th, 1934, Winkler filed an answer and return,

from this order that this appeal is being prosecuted.

Winkler has otherwise acknowledged by due process of the law. It is decreed entered in the same on July 23d, 1934, as amended, on appeal as successful trustee, the sum of \$14,823.00, as decreed by the Court. Thus decreed until he should pay the balance, E. W. Bink, and instruct him in the common law of Cook County, and keep him the property to forfeit into custody the said appeal proceedings.

It will be remembered that the decree ordered the plaintiff in error to account to the receiver, not to the master, nor to the court, and he can only comply with the terms of the decree by doing the definite thing he was ordered to do."

We are of the opinion that all the matters before the Superior Court and this court, which are attempted to be reviewed here, have already been determined, and are, therefore, res adjudicata. The order of the Superior Court is, therefore, affirmed.

AFFIRMED.

HEBEL, J. CONCURS;
Denis E. SULLIVAN, J. DID NOT TAKE PART.

[illegible]

We use of the opinion that all the matters before the

UNRECORDED COPY OF THIS DOCUMENT IS BEING MAINTAINED IN THE OFFICE OF THE ATTORNEY GENERAL.

we have already been informed, and have indicated your views on

...employment, in trust, to be used for the benefit of the ...

55110

THESE ARE THE NAMES OF THE CHILDREN OF THE
 JOHN HENRY TOM GIBB . 1 . BAVIANS . 2 .

37862

FRANK L. WEBB, Receiver of Depositors
State Bank, a Corp.,

Appellee,

v.

JOHN W. PRASSAS, et al., On Appeal of
HARRY RATTNER,

Appellants.

APPEAL FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 632²

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an appeal from that portion of a decree of the Superior Court of Cook County entered in a foreclosure proceeding, by which an allowance of attorney's fees and certain other charges is made. The matter had been referred to a Master in Chancery, to take proofs, and it was upon the report of the Master, and the objections and exceptions thereto, that a hearing was had, and the order entered. The principal of the debt secured by the mortgage was \$36,000.00, in addition to which interest, amounting to \$6,720.00 was due and unpaid. From the record before us, we conclude that it was a simple foreclosure proceeding.

The testimony taken before the Master as to the amount claimed for solicitor's fees, and upon which the finding of the court in this regard is based, is that of Walter B. Smith, an attorney-at-law, who testified in substance that he had been engaged in the practice of law for thirty years; that he had had considerable experience in the matter of foreclosure of mortgages; that he was familiar with charges usually made by attorneys of the Cook County Bar for such services; that he, the witness, had charge of the proceeding here involved; that he secured a default of the defendants and a reference to a Master; that he attended the hearings, including the argument of the objections and exceptions,

WILLIAM L. BROWN, Receiver of Deposits,
First National Bank, New York.

Witness,
J. B. BROWN.

V.

WILLIAM L. BROWN, Receiver of Deposits,
First National Bank, New York.

Witness,
J. B. BROWN.

Opinion filed Nov. 20, 1935

MR. JUSTICE WILLIAM L. BROWN: The opinion of the court is as follows:

This is an appeal from that portion of a decree of the Superior Court of Cook County entered in a foreclosure proceeding, by which an allowance of attorney's fees and certain other charges is made. The matter had been referred to a Master in Chancery, to take the facts, and it was upon the report of the Master, and the objections and exceptions thereto, that a hearing was had, and the order entered. The principal of the debt secured by the mortgage was \$2,000.00, in addition to which interest, amounting to \$8,750.00 was due and unpaid. From the twenty before us, we conclude that it was a simple foreclosure proceeding. The testimony taken before the Master as to the amount claimed for solicitor's fees, and upon which the finding of the court in this regard is based, is that of Alfred A. Twiss, an attorney-at-law, who testified in substance that he had been engaged in the practice of law for thirty years; that he had not considered this expenditure in the matter of foreclosure of mortgages; that he was familiar with certain legal costs usually made by attorneys at the bank, but that he was not familiar with the amount, and amount of the fees involved; that he received a statement of the expenses and a reference to a Master; that he attended the hearing, and that he was not familiar with the amount of the expenses and exceptions.

and that he expects to prepare a decree of sale and protect the interests of the complainant. He further testified that the usual and reasonable charge for such services by attorneys of the Chicago Bar would be the sum of \$3,500.00.

There is no sufficient showing as to the amount of work performed. We are of the opinion that upon the showing made, the court was not justified in entering the decree for the amount of solicitor's fees allowed. The decree is, therefore, reversed and the cause is remanded for a further hearing.

REVERSED AND REMANDED.

HEBEL, J. CONCURS,
DENIS E. SULLIVAN DID NOT TAKE PART.

and that he expects to prepare a book of rules and precedents for
the use of the court. He further testified that the same
and reasonable charge for such service by attorneys of the State
law would be the sum of \$5,000.00.

There is no sufficient showing as to the amount of work
performed, as one of the parties has been the moving party,
the court was not justified in ordering the fees for the same
at plaintiff's cost. The court is, therefore, reversed,
and the case is remanded for a further hearing.
REVEREND AND HONORABLE.

WITNESSED BY ME, the Clerk of the Court, this 1st day of June, 1911.

37955

PEOPLE OF THE STATE OF ILLINOIS,
ex rel., etc.,

v.

KASPAR-AMERICAN STATE BANK, a Corp.,

Petitioner - Appellee,

In re: Appeal of HARRY KANTA, et al.,

Respondents - Appellants.

APPEAL FROM

SUPERIOR COURT

OF COOK COUNTY.

282 E. 4. 232

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

On July 12th, 1932, a bill was filed in the Superior Court of Cook County by the Auditor of Public Accounts of the State of Illinois, praying for the dissolution of the Kaspar-American State Bank. Thereafter, on July 13th, 1932, an order was entered by the court approving the action of the Auditor of Public Accounts in taking possession of the Kaspar-American State Bank and its books and records, and ⁱⁿ appointing Arthur H. Meyer, receiver of the bank.

On March 23rd, 1934, a petition was filed by various persons who represented themselves to be depositors and creditors of the Kaspar-American State Bank, in which it was recited inter alia, that on December 20th, 1932, the receiver of this bank had, pursuant to an order of the Superior Court of Cook County, paid to the depositors of the bank a dividend amounting to 10% of their deposits, and that in the month of March, 1933, the receiver had sufficient cash on hand to pay an additional dividend to such depositors of 15%, but that he had refused and failed to do so, and that no action had been taken by any officials with regard to enforcing the stockholders' liability, which amounts to \$1,800,000.00. Various other allegations are made in this petition, and it concludes with a prayer to the court that a hearing be given to such petitioners for the purpose of determining the facts with regard to the condition of the bank, and

STATE OF ILLINOIS
IN SENATE,
JANUARY 1934.

REPORT

REPORT OF THE
COMMISSIONER OF THE
STATE OF ILLINOIS
ON THE
MATTER OF THE
STATE OF ILLINOIS
IN SENATE,
JANUARY 1934.

In re: Appeal of HARRY KAY, et al.,
Respondents - Appellants.

Opinion filed Nov. 20, 1933

THE FOLLOWING REPORT WAS SUBMITTED TO THE SENATE ON JANUARY 1934.

On July 18th, 1933, a bill was filed in the Superior Court

of Cook County by the Auditor of Public Accounts of the State of
Illinois, praying for the dissolution of the Kaspar-American State
Bank. Thereafter, on July 18th, 1933, an order was entered by the

court approving the action of the Auditor of Public Accounts in
taking possession of the Kaspar-American State Bank and its books
and records, and appointing Arthur W. Meyer, receiver of the bank.

On March 23rd, 1934, a petition was filed by various persons

who represented themselves to be depositors and creditors of the
Kaspar-American State Bank, in which it was recited that said bank

on December 30th, 1933, the receiver of this bank had, pursuant to

an order of the Superior Court of Cook County, paid to the depositors

of the bank a dividend amounting to 10% of their deposits, and

that in the month of March, 1934, the receiver had distributed cash

on hand to pay an additional dividend to such depositors of 10%, but

that he had refused and failed to do so, and that he action had been

taken by any officials with regard to entering the stockholders'

liability, which amounts to \$1,000,000.00. Various other allegations

were made in this petition, and it concluded with a prayer to the

court that a hearing be given to such petitioners for the purpose of

ascertaining the facts with regard to the condition of the bank, and

that the receiver of the bank be directed to use a reasonable proportion of cash on hand, which he is alleged to possess, for the purpose of paying a dividend to the depositors.

To this petition the receiver of the bank filed an answer, in which he recites his appointment as such receiver, the confirmation of such appointment by the order of the Superior Court of Cook County, and his reappointment as such receiver by the court. He admits that the books of the bank show that it is indebted to various persons in a large sum of money; that on December 30th, 1933, a dividend of 10% was paid to the general creditors of the bank, and that on September 1st, 1933, a further dividend of 15% was paid, and that the aggregate of such dividends amounts to \$936,160.59, out of a total of \$5,091,137.67. The receiver also recites in his answer that all preferred claims and trust liabilities allowed by the court had been paid upon demand being made for their payment; that on March 23rd, 1934, he had on hand as the property of the bank the sum of \$340,048.87, of which amount \$64,844.13 had been set aside as a reserve for unpaid trust liabilities and preferred claims, leaving available for distribution the sum of \$275,405.44; that he, as receiver, holds as assets of the bank, bonds and readily marketable securities having a present market value of approximately \$600,000.00, and that he has in process of settlement certain other claims due and owing to the bank, from which he expects to realize \$35,000.00 within the immediate future, making a total of liquid assets amounting to \$910,995.44. He further recites in his answer that he had on hand at the time of the filing of the petition the sum of \$25,000.00 paid on account of stockholders' liability by various of the stockholders of the bank.

On March 26th, 1934, an order was entered by the Superior Court of Cook County, in which it is recited that the court had read the petition and answer filed by the receiver, and ordered that

that the receiver of the bank be directed to use a reasonable por-
tion of cash on hand, which he is directed to transfer, for the
purpose of paying a dividend to the depositors.

In this petition the receiver of the bank filed an answer,
in which he recites his appointment as such receiver, the confir-
mation of such appointment by the order of the Circuit Court of
Cook County, and his appointment as such receiver by the court.
He admits that the books of the bank show that it is indebted to
various persons in a large sum of money; that on December 31st,
1928, a dividend of 10% was paid to the general stockholders of the
bank, and that on September 1st, 1929, a further dividend of 10%
was paid, and that the aggregate of such dividends amounts to
\$320,160.00, out of a total of \$3,081,137.50. The receiver also
recites in his answer that all preferred claims and trust liabilities
allowed by the court had been paid upon formal being made for their
payment; that on March 28th, 1934, he had on hand as the property
of the bank the sum of \$340,042.87, of which amount \$2,344.13 had
been set aside as a reserve for unpaid trust liabilities and preferred
claims; leaving available for distribution the sum of \$337,698.74;
that he, as receiver, holds as assets of the bank, bonds and readily
marketable securities having a present market value of approximately
\$600,000.00, and that he has in process of settlement certain other
claims due and owing to the bank, from which he expects to realize
\$25,000.00 within the immediate future, making a total of \$862,700.00.
He further recites in his answer
that he had on hand at the time of the filing of the petition the
sum of \$11,000.00 paid on account of stockholders' liability by
various of the stockholders of the bank.

On March 28th, 1934, an order was entered by the court
granting to Cook County, as claimant, the sum of \$2,344.13 and
the petition was granted filed by the receiver, and asking that

if a plan of reorganization of the bank then in process could not be fully and effectually completed on or before April 26th, 1934, then the receiver therein should proceed at once to pay out all available cash to the depositors of the bank as a further dividend, provided "the objectors shall present to the court a sufficient number of depositors favoring such action".

Various hearings were heard on the petition and answer.

The record indicates that efforts were at this time being made for a reorganization of the bank, and that on April 10th, 1933, the Auditor of Public Accounts had approved a plan for the reopening of the bank, which provided among other requirements, that the sum of \$300,000.00 be raised in cash for the capital of the bank, that \$1,800,000.00 of deposits by depositors were to be waived, and that such deposits were only to be paid out of monies recovered from the then assets of the bank. It is shown that thereafter waivers were received from a large proportion of the depositors in the bank. It also appears that a considerable portion of these depositors had attempted to recall these waivers.

On July 31st, 1934, a petition was filed in the Superior Court of Cook County by the Kaspar-American State Bank, in which it is recited that in the effort to complete the necessary prerequisites to reorganize this bank, 99% of the stock of the old corporation had either been deposited with the reorganization committee, or a pledge had been made to so deposit it, and that all the capital required for the reorganization of a new bank had been deposited with the Lawndale National Bank, and that sufficient waivers of deposit from the depositors of the old bank had been acquired to meet the requirements of the Auditor of Public Accounts in order that such new bank might be opened. It is also alleged in this petition that certain persons who had executed these waivers of deposit, and after their acceptance by the bank, had filed with the Auditor of Public Accounts

It is a plan of reorganization of the bank then in process could not be fully and effectually completed on or before April 25th, 1934, then the receiver therein should proceed at once to pay out all available cash to the depositors of the bank as a further dividend, provided "the objectors shall present to the court a sufficient number of depositors favoring such action".

Various hearings were held on the petition and answers. The record indicates that efforts were at this time being made for a reorganization of the bank, and that on April 10th, 1934, the Auditor of Public Accounts had approved a plan for the reorganization of the bank, which provided among other requirements, that the sum of \$500,000.00 be raised in cash for the capital of the bank, that \$1,300,000.00 of deposits by depositors were to be waived, and that such deposits were only to be paid out of monies recovered from the then assets of the bank. It is shown that thereafter receivers were received from a large proportion of the depositors in the bank. It also appears that a considerable portion of these depositors had attempted to recall these waivers.

On July 21st, 1934, a petition was filed in the Superior Court of Cook County by the Knapen-American State Bank, in which it is recited that in the effort to complete the necessary reorganization to reorganize this bank, 80% of the stock of the old corporation had either been deposited with the reorganization committee, or a pledge had been made to so deposit it, and that all the capital required for the reorganization of a new bank had been deposited with the Knapen National Bank, and that sufficient moneys of \$400,000.00 from the depositors of the old bank had been received to meet the requirements of the Auditor of Public Accounts in order that such new bank might be opened. It is also alleged in this petition that certain persons who had executed these waivers of deposit, and after their reorganization by the bank, had filed with the Auditor of Public Accounts

what purported to be a revocation of these waivers, and the prayer of the petition is that an order be entered by the Superior Court to the effect that all waivers executed and delivered to the petitioner, and which had been accepted by it, are good and valid in law and binding upon the persons who executed them, and that the alleged revocations of waivers are invalid. Upon a hearing by the court on this petition, the following order was entered:

"It is therefore ordered, adjudged and decreed that the waiver agreements signed by depositors of said Kaspar-American State Bank and delivered to said bank, and which have been accepted by said bank, are good and valid in law and binding upon the persons who executed them, and that so-called Revocations of Waivers executed after the acceptance of the depositors' waiver agreements are invalid.

Enter: Joseph B. David.

July 31, 1934."

It is from this order that the appeal herein is being prosecuted. This order is not final and does not settle the rights of the parties in respect to the subject matter of the issues that were before the trial court.

In People v. Drainage Commissioners, 282 Ill. 514, the Supreme Court said:

"There must be a final judgment which settles the rights of the parties in respect to the subject matter of the suit and concludes them until it is reversed or set aside to authorize an appeal to this court, (Keel v. Bently, 15 Ill. 228; Cunningham v. Loomis, 17 id. 555;) and the refusal of the judge to enter a final judgment does not justify an appeal from an interlocutory order. Brodhead v. Minges, 198 Ill. 513."

A motion was made to dismiss the appeal, which motion has been reserved to the hearing. In view of the fact that the order appealed from is not an appealable interlocutory order, and not a final order in the case, we hold that the appeal therefrom is improper and it is, therefore, dismissed.

APPEAL DISMISSED.

HEBEL, J. AND DENIS E. SULLIVAN, J. CONCUR.

and purporting to be a revocation of those powers, and the purpose of the petition is that an order be entered by the Superior Court to the effect that all writings executed and delivered to the petitioners, and which had been accepted by it, are null and void in law and binding upon the persons who executed them, and that the alleged revocations of powers are invalid. Upon a hearing by the court on this petition, the following facts were established:

"It is theretore ordered, adjudged and decreed that the power agreements signed by the petitioners at said places, American House and delivered to said bank, and which have been accepted by said bank, are good and valid in law and binding upon the persons who executed them, and that the alleged revocations of powers executed after the execution of the decisions, power agreements are invalid. Dated: Joseph B. Mayall. July 21, 1931."

It is from this order that the appeal herein is being prosecuted. This order is not final and does not settle the rights of the parties in respect to the subject matter of the issues that were before the trial court.

In Joseph B. Mayall v. American House, 223 Ill. 214, the Supreme Court said:

"There must be a final judgment which settles the rights of the parties in respect to the subject matter of the suit and concludes them until it is reversed or set aside by a subsequent order of the court. (Ill. v. Mayall, 223 Ill. 214, 215; Mayall v. American House, 223 Ill. 214, 215; and the reversal of the judgment by a final judgment does not justify an appeal from an interlocutory order. Mayall v. American House, 223 Ill. 214, 215.)"

A motion was made to dismiss the appeal, which motion had been renewed to the hearing. In view of the fact that the appeal from is not an appealable interlocutory order, and not a final order in the case, we hold that the appeal is not maintainable and it is, therefore, dismissed.

JUDICIAL DEPARTMENT,

JOSEPH B. MAYALL, J. CLERK.

37995

MARGARET E. BEATTY,

(Plaintiff) Appellee,

v,

CITY OF CHICAGO, a Municipal
Corporation,

(Defendant) Appellant.

38
APPEAL FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 632⁴

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment against the City of Chicago entered in an action brought by plaintiff and against the City for damages claimed to have been sustained by the plaintiff as a result of the alleged negligence of the defendant. The cause was submitted to a jury, which returned a verdict in favor of the plaintiff for the sum of \$4,345.00, upon which the judgment appealed from was entered.

Plaintiff testified in substance that on July 9th, 1932, she was assisting her husband who was in the grocery business at 1127 Thorndale Avenue in the City of Chicago. The testimony of plaintiff and photographs introduced in evidence indicate that there is a double curb at the edge of the sidewalk in front of the store of plaintiff's husband; that one of these curbs lies directly against the sidewalk, and that the other abuts the first curb and is immediately adjacent to the roadway of the street. These photographs show that a large portion of the outer curb is broken away. Plaintiff further testified to the effect that the gutter in the street is about eight or nine inches from the top of the outer curbstone; that this curbstone is made of concrete and is about six inches wide; that this outer curb was broken away in front of the store for a distance of about ten feet; that the break in the curb had been occasioned by automobiles and wagons backing up to the store; that this curb had broken away gradually for a period

ALBERT A. HENRY,

(Plaintiff) Respondent,

v.

CITY OF CHICAGO, a Municipal Corporation,

(Defendant) Appellant.

Opinion filed Nov. 30, 1935

MR. JUSTICE JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment against the City of Chicago entered in an action brought by plaintiff and against the City for damages claimed to have been sustained by the plaintiff as a result of the alleged negligence of the defendant. The cause was submitted to a jury, which returned a verdict in favor of the plaintiff for the sum of \$4,842.00, upon which the judgment appealed from was entered.

Plaintiff testified in substance that on July 20, 1933, she was assisting her husband who was in the grocery business at 1137 Thornbale Avenue in the City of Chicago. The testimony of plaintiff and photographs introduced in evidence indicate that there is a double curb at the edge of the sidewalk in front of the store of plaintiff's husband; that one of these curbs lies directly against the sidewalk, and that the other abuts the first curb and is immediately adjacent to the roadway of the street. These photographs show that a large portion of the outer curb is broken away. Plaintiff further testified to the effect that the gutter in the street is about eight or nine inches from the top of the outer curb; that this gutter is made of concrete and is about six inches wide; that this outer curb was broken away in front of the store for a distance of about ten feet; that the break in the curb had been caused by automobiles and wagons backing up to the store; that this curb had broken away gradually for a period

of about a year prior to July 9th, 1932, the date of the alleged accident and that the broken pieces looked "gravelly" and that part of it was broken through, and other places were broken into little lumps. Her testimony was further to the effect that on the day and time of the accident, she stepped off the curb to take hold of the reins on a horse, and that as she stepped back on to the curb, a piece of the curb broke off, and as a result of such break, she fell and thereby suffered the injuries complained of. She testified that by the fall she broke the knuckle of her elbow, that her knee and side were skinned, and that her knee was bruised; that she visited the office of her attending physician three times a week; that it was six or eight months before she could do anything with her arm, and that during that time it was painful, and that such pain continued until the time of the trial; that she could close her hand partly, but that she cannot separate her fingers, that they feel numb, and that she cannot straighten her elbow since the accident.

As to the occurrence, plaintiff produced one witness other than herself in the person of Elsie Beide, who testified in substance that at the time of the accident, she was employed at 1126 Thorndale Avenue; that she saw the plaintiff come out of her store just before the accident and take a horse by the bridle, and that as plaintiff stepped back on to the curb, she, plaintiff slipped and fell; that the curbstone at this time, was in very bad condition, all chipped off, and that the witness had known it to be in the condition described for about a year prior to the accident; that the place where the witness worked was directly across the street from the Beatty store, and that the witness saw the accident from a window in her store. She further testified that the horse referred to was between the curbstone and witness's store. This witness also testified that a big piece broke off of the curb when the plaintiff stepped back upon it, that she saw Mrs. Beatty lying there, and that after the accident

At about a year before the accident, the witness at the time

accident and that the broken pieces "traveled" and that some of it was broken through, and other pieces were broken into little

limbs. Her testimony was further to the effect that on the day

and time of the accident, she stepped off the curb to take hold of the reins on a horse, and that as she stepped back on to the curb,

a piece of the curb broke off, and as a result of such break, she

fell and thereby suffered the injuries complained of. She testified

that by the fall she broke the knuckle of her elbow, that her knee

and side were skinned, and that her knee was bruised; that she visited

the office of her attending physician three times a week; that it

was six or eight months before she could do anything with her arm,

and that during that time it was painful, and that such pain continued

until the time of the trial; that she could close her hand partly,

but that she cannot separate her fingers, that they feel numb, and

that she cannot straighten her elbow since the accident.

As to the occurrence, plaintiff produced one witness other

than herself in the person of Miss Wells, who testified in substance

that at the time of the accident, she was employed at LIND Thorndale

Yenne; that she saw the plaintiff come out of her store just before

the accident and take a horse by the bridle, and that as plaintiff

stepped back on to the curb, she, plaintiff slipped and fell; that

the occurrence at this time, was in very bad condition, all engaged

it, and that the witness had known it to be in the condition described

for about a year prior to the accident; that the place where the

witness worked was directly across the street from the Hasty store,

and that the witness saw the accident from a window in her store.

The further testified that the horse retired to and between the

entrance and witness's store. This witness also testified that a

big piece broke off of the curb when the plaintiff stepped back upon

it, that she saw Mrs. Hasty lying there, and that after the accident

she saw a piece of the curb about 3½ inches in diameter lying near the curb and near the plaintiff.

No occurrence witnesses, nor witnesses as to any condition of the curb, nor as to the happening of the accident nor as to the extent of plaintiff's injuries, were offered by the defendant. As stated, certain photographs were introduced in evidence by agreement, one of which has already been referred to.

Dr. Alfred J. Mitchell, a witness produced by plaintiff, testified that he had practiced in Chicago for more than 21 years, and that he specialized in treating cases arising out of accidents; that he examined the plaintiff two or three days prior to August 15th, 1932; that the technician in his office had taken X-rays of the plaintiff under the supervision of the witness on August 12th, 1932; that the X-ray pictures showed a fracture of the lower end of the left bone, and that the part which is broken away from the arm bone measures about an inch and a quarter in both directions; that there was no union of the fracture and the bone to which it was normally attached; that the condition produced a fifty percent loss in the use of the arm, which is based upon the fracture and the impairment of motion and the paralysis. This witness further testified that the condition is permanent.

The jury heard the evidence as to the occurrence, as to the injuries sustained by the plaintiff, and as to the extent and permanency thereof. The defendant does not attack the verdict as to amount. We are not prepared to say that the verdict is against the manifest weight of the evidence. Therefore, the judgment is affirmed.

AFFIRMED.

HEBEL AND DENIS E. SULLIVAN, JJ. CONCUR.

the saw a place of the camp about 15 inches in diameter lying near the camp and near the plaintiff.

No occurrence witnesses, nor witnesses as to any condition

of the camp, nor as to the happening of the accident nor as to the extent of plaintiff's injuries, were offered by the defendant. It is stated, certain photographs were introduced in evidence by agreement, one of which has already been referred to.

Dr. James L. McLaughlin, a witness produced by plaintiff, testified that he had practiced in Chicago for more than 25 years, and that he specialized in treating cases arising out of accidents; that he examined the plaintiff two or three days prior to August 15th, 1932; that the technician in his office had taken X-rays of the plaintiff under the supervision of the witness on August 15th, 1932; that the X-ray pictures showed a fracture of the lower end of the left bone, and that the part which is broken away from the arm bone measures about 1 1/2 inch and a quarter in both directions; that there was no union of the fracture and the bone to which it was normally attached; that the condition produced a fifty percent loss in the use of the arm, which is based upon the fracture and the impairment of motion and the paralysis. This witness further testified that the condition is permanent.

The jury heard the evidence as to the occurrence, as to the injuries sustained by the plaintiff, and as to the extent and permanency thereof. The defendant does not attack the verdict as to the amount. We are not prepared to say that the verdict is against the manifest weight of the evidence. Therefore, the judgment is affirmed.

AFFIRMED.

WITNESSES: JAMES L. McLAUGHLIN, D.M.D.

38183

CHRISTINA KUNZET, Administratrix and
PETER KUNZET, Co-Administrator of
the Estate of Peter Kunzet, Deceased,

Appellees,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
a corporation,

Appellants.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 6331

Opinion filed Nov. 20, 1935

MR. PRESIDING JUSTICE HALL DELIVERED THE OPINION OF THE COURT.

This is an appeal from an order of the Municipal Court of Chicago, granting plaintiffs a new trial in a suit brought against defendant to recover on two industrial life insurance policies. The trial was before the court and a jury, which returned a verdict for defendant. The hearing was on an amended statement of claim filed by plaintiffs, by which it is recited that on or about November 21st, 1932, the defendant executed and delivered to plaintiff's intestate an insurance policy, No. 113477320, for the sum of \$175.00, whereby defendant agreed, in consideration of the payment of weekly premiums of twenty five cents and due proofs of death of the insured, and the performance of certain other conditions, that it would pay to the executor and administrator of the insured the sum of \$175.00.

In this statement of claim it is also alleged inter alia that during the decedent's lifetime, he had received certain medical attention because of certain physical ailments, and that he had made prior applications for life insurance to the defendant company, which were rejected, previous to the making of the application for the insurance already referred to, and that the existence of the plaintiff's physical ailments was known to the defendant at the time the policy sued on was issued. It is further alleged in this statement of claim that about January 23rd, 1933, the defendant issued to

ADMINISTRATIVE
CHIEF OF POLICE

CHICAGO, ILL.

882 I.A. 683

ADMINISTRATIVE
CHIEF OF POLICE
CHICAGO, ILL.

CHICAGO, ILL.

V.

ADMINISTRATIVE
CHIEF OF POLICE
CHICAGO, ILL.

CHICAGO, ILL.

Opinion filed Nov. 20, 1935

MR. PRESIDENT, I HAVE THE HONOR TO ACKNOWLEDGE THE RECEIPT OF YOUR LETTER OF THE 15TH INSTANT. THIS IS AN APPEAL FROM AN ORDER OF THE MUNICIPAL COURT OF CHICAGO, GRANTING PLAINTIFF A NEW TRIAL IN A SUIT BROUGHT AGAINST DEFENDANT TO RECOVER ON TWO INDUSTRIAL LIFE INSURANCE POLICIES. THE TRIAL WAS BEFORE THE COURT AND A JURY, WHICH RETURNED A VERDICT FOR DEFENDANT. THE HEARING WAS ON AN EXTENDED STATEMENT OF CLAIM FILED BY PLAINTIFF, BY WHICH IT IS SWORN THAT ON OR ABOUT NOVEMBER 21ST, 1933, THE DEFENDANT EXERCISED AND DELIVERED TO PLAINTIFF'S INSURANCE AN INSURANCE POLICY, NO. 112345678, FOR THE SUM OF \$100,000, WHEREBY DEFENDANT AGREED, IN CONSIDERATION OF THE PAYMENT OF WEEKLY PREMIUMS OF TWENTY FIVE CENTS AND THE PAYMENT OF BONUS, THAT HE INSURED, AND THE PERFORMANCE OF CERTAIN OTHER CONDITIONS, THAT HE WOULD PAY TO THE EXECUTOR AND ADMINISTRATOR OF THE ESTATE OF THE SUM OF \$100,000.

IN THIS STATEMENT OF CLAIM IT IS ALSO ALLEGED THAT DURING THE DEFENDANT'S LIFETIME, HE HAD RECEIVED CERTAIN MEDICAL ATTENTION BECAUSE OF CERTAIN PHYSICAL ILLNESS, AND THAT HE HAD MADE PRIOR APPLICATIONS FOR LIFE INSURANCE TO THE DEFENDANT COMPANY, WHICH WERE REJECTED, PREVIOUS TO THE MAKING OF THE APPLICATION FOR THE INSURANCE ALLEGEDLY RETURNED TO, AND THAT THE DEFENDANT AT THE TIME DEFENDANT'S PHYSICAL ILLNESS WAS KNOWN TO THE DEFENDANT AT THE TIME THE POLICY WAS ON WAS ISSUED. IT IS FURTHER ALLEGED IN THIS STATEMENT OF CLAIM THAT ABOUT JANUARY 1934, THE DEFENDANT RETURNED TO

plaintiff a certain other insurance policy, No. 113868719, for the sum of \$280.00, and that the decedent, prior to his death, had paid all the premiums on this policy. It is also alleged that the defendant had full knowledge of the decedent's physical condition at the time this last mentioned policy was issued. The statement of claim also alleges that proofs of death of the insured were furnished to the defendant company on or about October 27th, 1933.

In the affidavit of merits filed by defendant, it is recited inter alia that the policies issued to decedent provided that if the insured was not in sound health on the date of the policies, or if before the date thereof, the insured had been rejected for insurance by the defendant or any other company, or had within two years of the application, been attended by a physician for any serious disease or complaint, or before said date, had had any pulmonary disease or chronic bronchitis, or cancer, or disease of the heart, liver or kidneys, unless such rejection, medical attention or previous disease is specifically recited in the policies and signed by the secretary, then the company may declare the policies void, and the liability of the company may be limited to the return of the premiums paid on the policies. It is also alleged in this affidavit that the deceased, Peter Kunzet, was not in sound health on the date of the issuance of these policies, but was suffering from serious diseases and complaints, and that within two years before the date thereof, he had been attended by a physician for such diseases; that within two years prior to the date of the issuance of the policies, Peter Kunzet was suffering from a pulmonary disease and a disease of the kidneys, and had been treated by a physician for such diseases, and that prior to the date of the issuance of these policies, Kunzet had been rejected for insurance by the defendant company; that Kunzet agreed and stated in the application for the policies that he had never had asthma,

plaintiff a certain other insurance policy, No. 111000000, for the sum of \$100.00, and that the defendant, prior to his death, had paid all the premiums on this policy. It is also alleged that the defendant had full knowledge of the deceased's physical condition at the time this last mentioned policy was issued. The statement of claim also alleges that proof of death of the insured was furnished to the defendant company on or about October 1938.

In the affidavit of merits filed by defendant, it is recited that the policy issued to defendant provided that if the insured was not in sound health on the date of the policy, or if before the date of the policy, the insured had been rejected for insurance by the defendant or any other company, or had within two years of the application, been attended by a physician for any serious disease or complaint, or before said date, had had any pulmonary disease or chronic bronchitis, or cancer, or disease of the heart, liver or kidneys, unless such rejection, medical attention or previous disease is specifically recited in the policy and signed by the secretary, then the company may declare the policy void, and the liability of the company may be limited to the return of the premiums paid on the policy. It is also alleged in this affidavit that the deceased, Peter Kinnert, was not in sound health on the date of the issuance of the policy, but was suffering from serious diseases and complaints, and that within two years before the date thereof, he had been attended by a physician for such diseases; that within two years prior to the date of the issuance of the policy, Peter Kinnert was suffering from a pulmonary disease and a disease of the kidneys, and had been treated by a physician for such diseases, and that prior to the date of the issuance of the policy, Kinnert had been rejected for insurance by the defendant company; that Kinnert signed and attested to the application for the policy that he was not under any disability.

bronchitis, disease of heart, kidneys or cough; that he had never been under any treatment in any hospital, that he was in sound health and that he had had no medical treatment for three years prior thereto. Defendant alleges that all these statements were false and untrue, that the policies were void, and that had it known the true facts with regard to the condition of the health of the insured, the policies would not have been issued, and denies that it had any knowledge of the condition of the defendant at the time such policies were issued.

Plaintiffs do not deny the statements made by defendant as to the decedent's physical condition at the time applications for these policies were made by him, that decedent's applications for insurance had previously been three times rejected by defendant company because of his physical condition, as shown by the applications, and that according to the tenor of the contracts, plaintiffs have no right of recovery, but contend that inasmuch as decedent's physical condition was actually known to the agent of the company who received the application, that defendant is now estopped to urge the defense set forth in the affidavit of merits. It is also claimed by plaintiffs that the cause was not at issue at the time it was submitted to the jury. It appears that, without the consent of the court, the plaintiffs had filed a statement of claim, subsequent to the statement of claim upon which the trial was had, and in the midst of the trial, objection was made to defendant's affidavit of merits, it being claimed that it did not sufficiently answer the additional statement of claim. In view of the fact that this is an action of the fourth class in the Municipal Court of Chicago, this contention is, therefore, without merit. In Walsh v. Fallis, 266 Ill. App. 341, this court said:

"The action was one of the fourth class in the municipal court in which no particular form of pleading is required. Nevertheless, plaintiff filed a statement of claim based upon the lease given to the defendant and which the defendant failed to sign. In actions of the fourth class in the municipal court of Chicago the pleadings are not controlling and the rights of the parties are dependent upon the evidence adduced

...diseases of heart, kidneys or lungs; that he had never been
...any treatment in any hospital, that he was in sound health
...that he had had no medical treatment for three years prior thereto.
...alleges that all these statements were false and untrue,
...the policies were void, and that had it known the true facts
...the condition of the health of the insured, the policies
...not have been issued, and denies that it had any knowledge of
...condition of the defendant at the time such policies were issued.
...Plaintiffs do not deny the statements made by defendant as
...the defendant's physical condition at the time applications for
...these policies were made by him, that defendant's applications for
...insurance had previously been three times rejected by defendant company
...because of his physical condition, as shown by the applications, and
...that according to the tenor of the contracts, plaintiffs have no
...right of recovery, but contend that insurance as defendant's physical
...condition was actually known to the agent of the company who received
...no application, that defendant is now estopped to urge the defense
...set forth in the affidavit of merits. It is also claimed by plain-
...tiffs that the cause was not at issue at the time it was admitted to
...a jury. It appears that, without the consent of the court, the
...plaintiffs had filed a statement of claim, subsequent to the statement
...of claim upon which the trial was had, and in the midst of the trial,
...objection was made to defendant's affidavit of merits, it being claimed
...that it did not sufficiently answer the additional statement of claim.
...view of the fact that this is an action of the fourth class in
...the Municipal Court of Chicago, this contention is, therefore, without
...force. In Edwin v. Miller, 200 Ill. 404, 71 Ill. App. 301, this court said:
"The action was one of the fourth class in the Municipal Court in which no preliminary form of pleading is required. Nevertheless, plaintiff filed a statement of claim based upon the issues given to him defendant and which was returned to him. In answer of the latter claim in the Municipal Court at Chicago the defendant was not controlling and in light of the parties and defendant upon the evidence adduced"

at the trial. Edgerton v. Chicago R. I. & P. Ry. Co.,
240 Ill. 311; Bruner v. Grand Trunk Western Ry. Co.,
319 Ill. 421."

Further, rule 104 of the Municipal Court of Chicago provides:

"Nor shall any motion for a new trial or in arrest of judgment be allowed on account of any defect in any pleading or other proceeding when the finding or verdict is sustained by the evidence."

It is also insisted that the court gave erroneous instructions. The record shows the following statement to have been made on behalf of the defendant after the court had instructed the jury: "To the giving of which said instructions, on behalf of the defendant, and each and every thereof, and each and every part thereof, the plaintiffs by their counsel, then and there duly excepted."

In Section 67, Paragraph 195, Chapter 110, Cahill's Revised Statutes, 1933, it is provided, among other things, that "All suggestions or objections to the instructions must be made before the jury retires from the bar, or within such further time as the trial court may by order allow before the jury retires from the bar, or they will be deemed to have been waived." As stated it appears from the record that the objection to the instructions made by counsel for plaintiffs was made after the instructions had been given to the jury, and that no specific objections ^{were} made to any instruction. The instructions were in a narrative form, and consisted of one connected oral charge. In Lichtenhan v. Prudential Ins. Co., 191 Ill. App. 412, this court said:

"The record expressly states and shows that the court instructed the jury orally. It is a grave question whether or not defendant has duly preserved an exception under the law governing objections and exceptions to oral instructions. The record does not show that any specific objections were made, save those made before the jury were instructed as to the subject matter contained in paragraphs 11, 12 and 13;

and nowhere in the record is there a statement to the court indicating the reason why such portion of the charge was objectionable, so as to give the court an opportunity to correct same if there was any error. We believe the case of Pecararo v. Halberg, 246 Ill. 95, and cases therein cited, preclude defendant from urging any error on this state of the record."

In view of the condition of the record, we hold that any question raised as to the instructions, is without merit.

The record shows that defendant had tendered back to the plaintiffs the full amount of premiums paid by the decedent, amounting to \$30.90. The holding of this court is that the trial court was in error in granting a new trial, and it is ordered that the order of the Municipal Court, granting a new trial, be reversed. It is further ordered that judgment be entered here against the defendant for \$30.90, the amount of the premiums paid by plaintiff's intestate, also that defendant have judgment for costs here.

REVERSED WITH JUDGMENT HERE.

HEBEL AND DENIS E. SULLIVAN, JJ. CONCUR.

37505

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JOHN S. RUSCH,

Defendant in Error,

v.

BETTY FABISH, ELIZABETH HELLER, FANNIE
J. HOCHSTADTER, HAROLD M. COHN, and
BERTRAM H. KOHN,

Plaintiffs in Error.

WIT OF ERROR

TO COUNTY COURT

COOK COUNTY.

282 I.A. 633²

Opinion filed Nov. 20, 1935.

MR. JUSTICE REBEL DELIVERED THE OPINION OF THE COURT.

This is a writ of error issued upon the application of the respondents seeking a review of an order wherein the respondents, Betty Fabish, Elizabeth Heller, Fannie J. Hochstadter, Harold M. Cohn, and Bertram H. Kohn, were each found guilty, in the County Court of Cook County, Illinois, of misconduct and misbehavior in the performance of their several duties as judges and clerks of election, Betty Fabish, Elizabeth Heller, and Fannie Hochstadter, being sentenced to 30 days imprisonment in the county jail of Cook County, and Harold M. Cohn and Bertram H. Kohn, for a period of 60 days.

The proceeding was provided for by section 13, article 2 of the City Election Act, Chap. 46 of Cahill's Ill. Rev. St. By a petition and affidavit filed on behalf of the People of the State of Illinois upon the relation of John S. Rusch, Chief Clerk of the Election Commissioners of the City of Chicago, the cause was tried by the court in a summary manner. The evidence of witnesses appearing in court was heard, including each of the respondents.

From the evidence it appears that the general election was held on November 8, 1932; that the respondents were judges and clerks of election in the 36th Precinct of the 4th Ward located in the City of Chicago, Cook County, Illinois; that in said precinct 800

STATE OF ILLINOIS,
COUNTY OF COOK.

Know all men by these presents,

I, the undersigned,

JOHN A. COOK, Clerk of the County of Cook, Illinois,
do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk.

Witness my hand and seal of office at Chicago, Illinois, this 1st day of November, 1935.

Opinion filed Nov. 30, 1935.

282 I.A. 683

MR. JUSTICE BRANSON has written the opinion in the case.

This is a writ of error issued upon the application of the respondents seeking a review of an order made in the proceedings.

JOHN A. COOK, Clerk of the County of Cook, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk.

JOHN A. COOK, Clerk of the County of Cook, Illinois, do hereby certify that the within and foregoing is a true and correct copy of the original as the same appears in the files of the County Clerk.

The respondents of their several duties as judges and clerks of

election, Betty Johnson, Elizabeth Miller, and Francis Woodbridge,

being returned to 30 days imprisonment in the county jail of Cook

County, and Harold E. Cook and William E. Cook, for a period of

30 days.

The proceeding was provided for by section 12, article 2

of the City Election Act, Chap. 40 of Illinois' Ill. Rev. St. 1935.

A petition and affidavit filed on behalf of the people of the State

of Illinois upon the relation of John A. Cook, Clerk of the

Election Commissioners of the City of Chicago, the same was filed

by the State in a summary manner. The relevant provisions of the

law in court was heard, including each of the respondents.

From the evidence it appears that the general election

was held on November 3, 1935; that the respondents were judges and

clerks of election in the Cook County of the 1st ward located in

the City of Chicago, Cook County, Illinois; that in said precinct was

voters were registered, of which 580 voters cast their several ballots; that the respondents appeared and acted as judges and clerks of said precinct on the day of the election above stated, and remained until the votes cast were canvassed, and left at 7 o'clock the following morning; that the ballots were again canvassed in this proceeding, and there were various discrepancies between the votes cast and the votes returned and tallied upon the tally sheets of the respondents for the candidates for the office of judge of the Municipal Court of Chicago.

All of the respondents testified as to the performance of their several duties on the day of the election; that they had no interest in any of the candidates, and that the mistakes which appear to have been made were not intentional.

Appearing on behalf of the petitioner as a witness was an expert in handwriting, who testified in substance that from an examination of the tally sheets of the respondents offered in evidence, she was of the opinion that they were made from dummy sheets, and that such opinion was based upon the lines of the tallies, both horizontal and vertical, and oblique on the tally sheets returned by the respondents.

The evidence does not show that the respondents as judges and clerks used dummy tally sheets in canvassing the ballots cast by the voters in this precinct, other than the evidence of the handwriting expert.

The theory upon which the petitioner stands in this case is that discrepancies existed between the return of the ballots cast, as evidenced by the tally sheets, and the recount of the ballots in open court, and that either the respondents used dummy tally sheets or divided the counting of the ballots cast into teams, one team calling and recording the result of the canvass of a portion of the

papers were witnessed, of which 500 voters cast their several

ballots; that the respondents appeared and acted as judges and

clerks of said precinct on the day of the election above stated, and

remained until the votes cast were counted, and left at 7 o'clock

the following morning; that the ballots were again examined in

this proceeding, and there were various discrepancies between the

votes cast and the votes returned and called upon the tally sheets

of the respondents for the candidates for the office of Judge of

the Municipal Court of Chicago.

All of the respondents testified as to the performance

of their several duties on the day of the election; that they had

no interest in any of the candidates, and that the mistakes which

appear to have been made were not intentional.

Appearing on behalf of the petitioner as a witness was

an expert in handwriting, who testified in substance that from an

examination of the tally sheets of the respondents offered in

evidence, and as to the opinion that they were made from copy

sheets, and that such opinion was based upon the lines of the letters,

both horizontal and vertical, and oblique on the tally sheets

returned by the respondents.

The evidence does not show that the respondents as judges

and clerks used dummy tally sheets in counting the ballots cast by

the voters in this precinct, other than the evidence of the handwriting

expert.

The theory upon which the petitioner stands in this case is

that discrepancies existed between the return of the ballots cast,

as witnessed by the tally sheets, and the records of the ballots as

open books, and that either the respondents made dummy tally sheets

or divided the counting of the ballots into teams, one team

called and counting the results at the instance of a defendant, the

ballots, while the other team called and recorded the tallies of the balance of the ballots. The evidence in the record must convince the court to a certainty that such unlawful methods were, in fact, used when canvassing the ballots to determine the number of votes cast for each of the candidates at the election.

We have indicated that the only evidence in the record is the evidence by the handwriting expert that she formed an opinion from an examination of the tally sheets returned by these respondents that dummy tally sheets were used by the respondents in canvassing the ballots cast at the election. Each respondent, however, denied that ballots were so tallied, more especially the clerks of the election, who actually recorded the ballots canvassed upon the tally sheets.

One of the discrepancies is that one of the candidates for office in the Municipal Court of Chicago was credited with a total vote of 250. From the tally sheets returned by these respondents it appears that 69 straight ballots were cast, and 81 scratched ballots were recorded for this candidate. The ballots so recorded upon the tally sheet would make a total of 150 ballots for the candidate, and not 250. The tallies recorded upon the sheet should prevail, not the totals recorded at the end of the sheet, and this fact as it appears from the record would not of itself indicate a fraudulent act.

It also appears from the evidence that the respondents discovered during the canvass of the ballots that there was a mistake, and they proceeded to recount the ballots cast. We find that errors in the canvass affected each of the candidates more or less. Each of these respondents testified and denied that there was a plan to make a false return. It is borne out by the record that no concerted effort was used to fraudulently change the result of the election for any one of the candidates on the ballot.

ballots, while the other team called and recorded the ballots of the balance of the ballots. The evidence in the second case was that the court in a certainty that such ballots without vote, in fact, used when counting the ballots to determine the number of votes cast for each of the candidates at the election.

It was indicated that the only evidence in the second case is the evidence by the handwriting expert that the figures on opinion from an examination of the tally sheets returned by these respondents that these tally sheets were used by the respondents in counting the ballots cast at the election. Each respondent, however, denied that ballots were so called, more especially the sheets of the election, the actually recorded the ballots returned from the tally sheets.

One of the discrepancies is that one of the candidates for office in the Municipal Court of Chicago was credited with a total vote of 230. From the tally sheets returned by these respondents it appears that 23 straight ballots were cast, and 23 straight ballots were recorded for this candidate. The ballots as recorded from the tally sheets would make a total of 133 ballots for the candidate, and not 230. The tally sheets recorded from the other sheets would, and the totals recorded at the end of the sheet, and this fact is apparent from the record would not of itself indicate a discrepancy.

It also appears from the evidence that the respondents discovered during the canvass of the ballots that there was a mistake, and they proceeded to recount the ballots cast. At that time, however, in the canvass attended each of the candidates went to leave, and of these respondents testified and denied that there was a mistake made a tally sheet. It is known that if the record that he committed that was used to fraudulently change the results of the election the way out of the canvass on the ballot.

The evidence is not satisfactory, and while we appreciate the difficulty the petitioner labored under in the presentation of the violation of the election law, still the respondents are each entitled to the right to question the order of contempt, and may point to the evidence as not establishing the guilt of each of them, as required by law.

It is important, however, that the evidence in this action establish to a certainty, by clear and convincing evidence, that each of the respondents was guilty of a contempt in the violation of the election law, as officers of the court, in knowingly, fraudulently and unlawfully making a false canvass and return of the votes cast, as charged in the petition.

The weight of the evidence does not affirmatively establish the guilt of the respondents and is not such as would justify the order entered in this court finding each of the respondents guilty and sentencing each of them as we have indicated in this opinion. The order is reversed and the cause remanded.

REVERSED AND REMANDED.

HALL, P.J. CONCURS;
SULLIVAN, DENIS E., J. TOOK NO PART,

The evidence is not satisfactory, and while we are unable to
the difficulty the petitioners raised under the present law of
the violation of the election law, still the respondents are each
entitled to the right to question the order of contempt, and may
bring to the evidence as not establishing the guilt of each of them,
as required by law.

It is important, however, that the evidence in this action
established to a certainty, by clear and convincing evidence, that
each of the respondents was guilty of a contempt in the violation
of the election law, as officers of the court, in knowingly, fraud-
ulently and unlawfully making a false return and return of the
votes cast, as charged in the petition.

The weight of the evidence does not affirmatively establish
the guilt of the respondents and is not such as would justify the
order entered in this court finding each of the respondents guilty
and sentencing each of them as we have indicated in this opinion.
The order is reversed and the cases remanded.
REVEREND AND HONORABLE

WILLIAM H. HARRIS, J. CLERK OF COURT.
JAMES H. HARRIS, J. CLERK OF COURT.

37612

BYRNE BROTHERS CONSTRUCTION
COMPANY, INC., a Corporation,

Plaintiff-Appellee,

v.

THE SANITARY DISTRICT OF CHICAGO,
a Municipal Corporation,

Defendant-Appellant.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

282 I.A. 633³

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This is an action by the plaintiff to recover for the balance due on the contract with the defendant, together with additional compensation claimed. A trial was had and judgment entered upon the verdict of the jury for \$74,000, and the defendant appeals to this court from that judgment.

The plaintiff, Byrne Brothers Construction Company, on August 11, 1927, upon competitive bids, was awarded the contract by the defendant, The Sanitary District of Chicago, for the construction of seven crossings, that is, sections of sewer under the Chicago River at Barry Avenue and Grace Street, and under the North Shore Channel at Bryn Mawr, Peterson, Devon and Tuohy Avenues in the City of Chicago, and at Lake Street in the Village of Niles Center and for the construction of fourteen (14) shafts, one at each end of the seven crossings. This work was performed during 1927 and 1928.

Plaintiff's claim for additional compensation is as follows:

Item

| | | |
|---|---------------------------------------|-----------|
| 1 | Additional pumping at Barry avenue | 5,573.13 |
| 2 | Additional pumping at Grace street | 6,022.31 |
| 3 | Additional work at Lake street | 10,110.14 |
| 4 | Rebuilding west shaft at Barry avenue | 13,745.46 |
| 5 | Pumping west shaft at Barry avenue | 76.48 |
| 6 | Changing pipe length at Lake street | 1,141.16 |
| 7 | Changing lugs on ladders in shafts | 445.05 |

BYRON BROTHERS CORPORATION,
COMPLAINANT, vs.
DEFENDANT-Appellee.

THE CIRCUIT COURT OF CHICAGO,
a judicial corporation.

v.

THE CHICAGO RIVER & HARRY AVENUE
TRUST, et al.,
DEFENDANTS-Appellants.

Opinion filed Nov. 20, 1935

333 I.A. 833

Opinion filed Nov. 20, 1935

THE CHICAGO RIVER & HARRY AVENUE TRUST, et al.,

This is an action by the plaintiff to recover for the

balance due on the contract with the defendant, together with

additional compensation claimed. A trial was had and judgment

entered upon the verdict of the jury for \$75,000, and the defendant

appeals to this court from that judgment.

The plaintiff, Byron Brothers Corporation, on

August 12, 1927, upon competitive bids, was awarded the contract

to the defendant, The Chicago River & Harry Avenue Trust, for the con-

struction of seven crossings, that is, sections of sewer under

the Chicago River at Harry Avenue and State Street, and under

the North Branch Channel at Lake Street, Western, Taylor and Lundy

Avenues in the City of Chicago, and at Lake Street in the Village

of Wilson Center and for the construction of Sewer (12) under

one at each end of the seven crossings. This work was performed

during 1927 and 1928.

Plaintiff's claim for additional compensation is as

follows:

| | | |
|-----|------------------------------------|------------|
| 1 | Additional payment at Harry Avenue | \$2,750.00 |
| 2 | Additional payment at State Street | \$2,000.00 |
| 3 | Additional work at Lake Street | \$2,250.00 |
| 4 | Additional work at Harry Avenue | \$2,750.00 |
| 5 | Additional work at Lake Street | \$2,250.00 |
| 6 | Additional work at Harry Avenue | \$2,750.00 |
| 7 | Additional work at Lake Street | \$2,250.00 |
| 8 | Additional work at Harry Avenue | \$2,750.00 |
| 9 | Additional work at Lake Street | \$2,250.00 |
| 10 | Additional work at Harry Avenue | \$2,750.00 |
| 11 | Additional work at Lake Street | \$2,250.00 |
| 12 | Additional work at Harry Avenue | \$2,750.00 |
| 13 | Additional work at Lake Street | \$2,250.00 |
| 14 | Additional work at Harry Avenue | \$2,750.00 |
| 15 | Additional work at Lake Street | \$2,250.00 |
| 16 | Additional work at Harry Avenue | \$2,750.00 |
| 17 | Additional work at Lake Street | \$2,250.00 |
| 18 | Additional work at Harry Avenue | \$2,750.00 |
| 19 | Additional work at Lake Street | \$2,250.00 |
| 20 | Additional work at Harry Avenue | \$2,750.00 |
| 21 | Additional work at Lake Street | \$2,250.00 |
| 22 | Additional work at Harry Avenue | \$2,750.00 |
| 23 | Additional work at Lake Street | \$2,250.00 |
| 24 | Additional work at Harry Avenue | \$2,750.00 |
| 25 | Additional work at Lake Street | \$2,250.00 |
| 26 | Additional work at Harry Avenue | \$2,750.00 |
| 27 | Additional work at Lake Street | \$2,250.00 |
| 28 | Additional work at Harry Avenue | \$2,750.00 |
| 29 | Additional work at Lake Street | \$2,250.00 |
| 30 | Additional work at Harry Avenue | \$2,750.00 |
| 31 | Additional work at Lake Street | \$2,250.00 |
| 32 | Additional work at Harry Avenue | \$2,750.00 |
| 33 | Additional work at Lake Street | \$2,250.00 |
| 34 | Additional work at Harry Avenue | \$2,750.00 |
| 35 | Additional work at Lake Street | \$2,250.00 |
| 36 | Additional work at Harry Avenue | \$2,750.00 |
| 37 | Additional work at Lake Street | \$2,250.00 |
| 38 | Additional work at Harry Avenue | \$2,750.00 |
| 39 | Additional work at Lake Street | \$2,250.00 |
| 40 | Additional work at Harry Avenue | \$2,750.00 |
| 41 | Additional work at Lake Street | \$2,250.00 |
| 42 | Additional work at Harry Avenue | \$2,750.00 |
| 43 | Additional work at Lake Street | \$2,250.00 |
| 44 | Additional work at Harry Avenue | \$2,750.00 |
| 45 | Additional work at Lake Street | \$2,250.00 |
| 46 | Additional work at Harry Avenue | \$2,750.00 |
| 47 | Additional work at Lake Street | \$2,250.00 |
| 48 | Additional work at Harry Avenue | \$2,750.00 |
| 49 | Additional work at Lake Street | \$2,250.00 |
| 50 | Additional work at Harry Avenue | \$2,750.00 |
| 51 | Additional work at Lake Street | \$2,250.00 |
| 52 | Additional work at Harry Avenue | \$2,750.00 |
| 53 | Additional work at Lake Street | \$2,250.00 |
| 54 | Additional work at Harry Avenue | \$2,750.00 |
| 55 | Additional work at Lake Street | \$2,250.00 |
| 56 | Additional work at Harry Avenue | \$2,750.00 |
| 57 | Additional work at Lake Street | \$2,250.00 |
| 58 | Additional work at Harry Avenue | \$2,750.00 |
| 59 | Additional work at Lake Street | \$2,250.00 |
| 60 | Additional work at Harry Avenue | \$2,750.00 |
| 61 | Additional work at Lake Street | \$2,250.00 |
| 62 | Additional work at Harry Avenue | \$2,750.00 |
| 63 | Additional work at Lake Street | \$2,250.00 |
| 64 | Additional work at Harry Avenue | \$2,750.00 |
| 65 | Additional work at Lake Street | \$2,250.00 |
| 66 | Additional work at Harry Avenue | \$2,750.00 |
| 67 | Additional work at Lake Street | \$2,250.00 |
| 68 | Additional work at Harry Avenue | \$2,750.00 |
| 69 | Additional work at Lake Street | \$2,250.00 |
| 70 | Additional work at Harry Avenue | \$2,750.00 |
| 71 | Additional work at Lake Street | \$2,250.00 |
| 72 | Additional work at Harry Avenue | \$2,750.00 |
| 73 | Additional work at Lake Street | \$2,250.00 |
| 74 | Additional work at Harry Avenue | \$2,750.00 |
| 75 | Additional work at Lake Street | \$2,250.00 |
| 76 | Additional work at Harry Avenue | \$2,750.00 |
| 77 | Additional work at Lake Street | \$2,250.00 |
| 78 | Additional work at Harry Avenue | \$2,750.00 |
| 79 | Additional work at Lake Street | \$2,250.00 |
| 80 | Additional work at Harry Avenue | \$2,750.00 |
| 81 | Additional work at Lake Street | \$2,250.00 |
| 82 | Additional work at Harry Avenue | \$2,750.00 |
| 83 | Additional work at Lake Street | \$2,250.00 |
| 84 | Additional work at Harry Avenue | \$2,750.00 |
| 85 | Additional work at Lake Street | \$2,250.00 |
| 86 | Additional work at Harry Avenue | \$2,750.00 |
| 87 | Additional work at Lake Street | \$2,250.00 |
| 88 | Additional work at Harry Avenue | \$2,750.00 |
| 89 | Additional work at Lake Street | \$2,250.00 |
| 90 | Additional work at Harry Avenue | \$2,750.00 |
| 91 | Additional work at Lake Street | \$2,250.00 |
| 92 | Additional work at Harry Avenue | \$2,750.00 |
| 93 | Additional work at Lake Street | \$2,250.00 |
| 94 | Additional work at Harry Avenue | \$2,750.00 |
| 95 | Additional work at Lake Street | \$2,250.00 |
| 96 | Additional work at Harry Avenue | \$2,750.00 |
| 97 | Additional work at Lake Street | \$2,250.00 |
| 98 | Additional work at Harry Avenue | \$2,750.00 |
| 99 | Additional work at Lake Street | \$2,250.00 |
| 100 | Additional work at Harry Avenue | \$2,750.00 |

| | |
|--|-----------------|
| 8 Performing 94.3 feet of work at Barry avenue by Coffey Dam instead of tunnel (\$114,552.72 less \$7,305.42) plus \$16,077.10 for 15% additional claimed by Byrne Bros. | 123,324.40 |
| 9 Undisputed balance due on regular vouchers | <u>2,129.74</u> |
| Total - - | \$162,567.87 |

The defendant admits that payment for item 8, amounting to \$1,141.16, and the balance due on the contract of \$2,129.74, is not contested in the proceeding.

The material provisions of the contract entered into between the parties are those covering requirements for bidding and instructions to bidders and are, in part, as follows:

"Bidders must determine for themselves the quantities of work that will be required, by such means as they may prefer, and shall assume all risks as to variations in the quantities of the different classes of work actually performed under the contract. Bidders shall not at any time after the submission of this proposal, dispute or complain of the aforesaid schedule of quantities or assert that there was any misunderstanding in regard to the amount or the character of the work to be done, and shall not make any claims for damages, or for loss of profits or for an extension of times because of a difference between the approximate quantities of the various classes of work assumed for comparison of bids, and the quantities of work actually performed."

and this provision is based upon instructions to bidders, which are in part as follows:

"Bidders must carefully examine the various sites of the work and the adjacent premises, and the various means of approach to the sites, and shall make all necessary investigations to inform themselves thoroughly as to the facilities for delivering, placing, and operating the necessary plant, and the facilities for delivering and handling material at the sites and to inform themselves thoroughly as to all the difficulties that may be involved in the completion of all work under the attached contract in accordance with the specifications and the plans thereto attached. Bidders are also required to examine all maps, plans, and data mentioned in the specifications, contract or proposal as being on file in the office of the Chief Engineer, for examination by bidders. No plea of ignorance of conditions that exist or that may hereafter exist, or of conditions or difficulties that may be encountered in the

8. Reverting to the fact of work of party
agreed by letter for limited of amount
\$1,100.00 plus
\$1,100.00 for the additional amount

100,000.00

9. Unadjusted balance due on regular

100,000.00

100,000.00

Total - -

The following table shows payment for item 8, amounting to

\$1,100.00, and the balance due on the contract of \$1,100.00, is

not included in the preceding.

The material provisions of the contract entered into

between the parties the same covering requirements for building and

instructions to Builders and are, in part, as follows:

"Builders must determine for themselves the quantities
of work that will be required, by work means as they
may prefer, and shall assume all risks as to variations
in the quantities of the different classes of work
actually performed under the contract. Builders shall
not at any time after the completion of this contract,
either on account of the absolute schedule of completion
or on any other basis, have any disagreement in regard
to the amount of the character of the work to be done,
and shall not make any claim for payment, on the basis
of a profit or loss or extension of time because of a
difference between the approximate quantities of the
various classes of work assumed for completion of this
contract and the quantities of work actually performed."

and this provision is based upon instructions to Builders, which

are in part as follows:

"Builders must carefully examine the various sides of the
work and the adjacent premises, and the various means of
approach to the sites, and shall make all necessary in-
vestigations to inform themselves thoroughly as to the
conditions for building, existing, and proposed, the
necessary means, and the facilities for delivery and
loading material at the sites and the interior themselves
thoroughly as to all the difficulties that may be involved
in the completion of all work under the contract, and
in connection with the specifications and the plans made
known. Builders are also required to examine all plans,
drawings, and specifications in the office of the
owner, and to be present on site in the office of the
owner, for examination by Builders. No plan of
completion shall be made by Builders without the
consent of the owner, and no work shall be commenced in the

execution of the work under this contract, as result of failure to make the necessary examinations and investigations, will be accepted as an excuse for any failure or omission on the part of the Contractor to fulfill in every detail all of the requirements of said contract, specifications and plans, or will be accepted as a basis for any claims whatsoever for extra compensation, or for an extension of time."

In order to determine whether the extra compensation is recoverable, it is necessary that we have in mind the provisions of the contract in relation to the recovery of such extra compensation. One of the provisions is in these words:

"The contractor shall at all times during construction provide and maintain ample means and devices with which to promptly remove and properly dispose of all water or sewage entering the trenches, pits or other parts of the work, and keep said excavations dry until the structures to be built therein are completed. All water pumped or drained from the work hereunder, shall be disposed of in a suitable manner without damage to adjacent property, or to sewers, pavements, electrical conduits, or other work or property. Before the acceptance of the work or any portion thereof, the Contractor shall, when required by the Engineer, pump out the entire work so that the same can be inspected and shall clean the entire finished work, to the satisfaction of the Engineer.

The sewers to be connected under this contract with the shafts are Barry Avenue and at Grace Street in Chicago will be found full of water. The Contractor shall unwater the sewers sufficiently to allow the work to be constructed under dry conditions before making these connections."

A further provision for work included is:

"Earth excavation in tunnel shall include the loosening, loading, removing and disposing in the specified manner of all materials, wet or dry, necessary to be removed for purposes of construction. The furnishing, placing and maintaining of all sheeting, bracing and timbering, the pumping, bailing and cleaning, the care of existing structures and utilities, the protection and repair of street surfaces and sidewalks and all incidental and collateral work necessary to complete the entire work as specified."

And it further provides that:

"The river and channel crossings shall be constructed to the lines, grades and dimensions shown on the accompanying plans. Included in this work of construction is excavation, both wet and dry, in open cut, and tunnel, disposal of material, back-filling, placing and removing

extension of the work under this contract, as provided in Article IV of the contract, and the necessary amendments and modifications, will be covered as a separate item for any future extension on the part of the Government on Article IV of the contract. It is the policy of the Government to extend every detail of the work under this contract, and the necessary amendments and modifications, as far as possible, for any claims whatsoever for extra compensation, or for an extension of time.

One of the provisions is in these words:

of the contrast in relation to the recovery of when such condition-
recoveryable, it is necessary that we have in mind the provisions
In order to determine whether the same condition is

[illegible][illegible]

1. Further provision for work facilities:

[illegible]

and it is therefore necessary to

...in the
... ..
... ..
... ..
... ..

of cofferdams, sheeting, form work and timbering, pumping and removal of water, pumping out existing sewers, relocating of water mains where necessary, furnishing and placing of concrete, reinforcing steel, cast iron pipe, cast iron pipe specials, iron castings, structural steel and all other incidental work necessary to the construction of the river and channel crossings complete as specified, all of which various classes of work shall be performed as hereinbefore specified. The grade of concrete shall be of the quality hereinbefore specified as Class "A", unless otherwise specifically stated."

Also:

"The contractor shall place and later completely remove any cofferdams needed to properly perform all of the work under Items 1 to 7, inclusive, in the dry. No laying of pipe under water will be permitted and no concrete shall be deposited in water."

The contention of the defendant upon this appeal is that the written contract merged all previous negotiations and is presumed, in law, to express the final understanding of the parties. If the contract did not express the true agreement, it was claimant's folly to have signed it. The court cannot be governed by any such outside considerations. Previous and contemporary transactions and facts may be very properly taken into consideration to ascertain the subject matter of a contract and the sense in which the parties may have used particular terms, but not to alter or modify the plain language which they have used.

This is the general rule applicable to a written contract, and of course is binding upon the parties. However, the plaintiff's reply to this contention is that where a municipal corporation furnishes erroneous engineering information to a contractor, who is required to rely thereon, without opportunity to complete investigation, it is liable to the contractor for the extra cost of completing the work.

Upon this question, however, the contract provides, as we have already stated in this opinion, that the bidders must carefully examine the various cites of the work, and the conditions that exist

or that may hereafter exist in the doing of the work, and failure to satisfy themselves as to the actual conditions and difficulties that may be encountered in the execution of the work, will not justify the complaint by them that there was a misunderstanding in the doing of the work. While it may be true that if plaintiff was misled by the fraudulent conduct of the defendants, a reasonable and additional charge may be made by the plaintiff if the evidence establishes such charge of fraud.

There are no allegations of fraud in this case, nor is there any evidence which tends to show that there was misrepresentation as to the condition of the ground on the part of the Sanitary District.

The claims for extra compensation for pumping at Berry Avenue and Grace Street in the amounts set forth in the items quoted herein, are covered by the provisions of the contract referred to in this opinion, and it seems to be clear that the plaintiff was required during the execution of the work to "promptly remove and properly dispose of all water, or sewage entering the trenches," as a part of the duty required of the plaintiff.

When the plaintiff entered into the contract with the defendant it assumed the difficulties incident to the construction of the improvements, and necessarily a part of the work to be performed. In the work of tunneling under ground, certain difficulties may be encountered, such as air conditions, water, and other obstacles that might interfere, in a measure, with the performance of this class of work. It does not require an expert to understand that underground working conditions may be encountered such as gas, water, quicksand, rock and gravel, which would necessarily interfere with the progress of the work, and when the plaintiff proceeded to do this work under its contract, it took such risk. The contract

or that may have been taken in the doing of the work, and to allow
to satisfy themselves as to the actual condition and situation
that may be encountered in the execution of the work, will not
justify the complaint by them that there was a misrepresentation in
the doing of the work. While it may be true that it is not
mandated by the defendant's contract of the defendant, a reasonable
and additional change may be made by the plaintiff in the plan
established with change of time.

There are no allegations of fraud in this case, nor is
there any evidence which tends to show that there was misrepresenta-
tion as to the condition of the ground on the part of the defendant.
Dismissed.

The claim for extra compensation for running of heavy
equipment and other things in the amount set forth in the item
present herein, are covered by the provisions of the contract between
it in this opinion, and it seems to be clear that the plaintiff
was required during the execution of the work to properly remove
and properly dispose of all water, or remove and dispose of the same,
as a part of the duty required of the plaintiff.

When the plaintiff entered into the contract with the
defendant it assumed the obligation incident to the execution
of the improvement, and necessarily a part of the work to be
performed. In the work of tunneling under ground, certain things
may be encountered, such as air circulation, water, and other
conditions that might interfere, in a measure, with the progress
of this class of work. It does not require an expert in engineering
that a tunneling project will be encountered with the
water, rock and gravel, which would necessarily interfere
with the progress of the work, and when the plaintiff contracted to
do this work under the contract, it took upon itself the contract

itself determined the scope of the undertaking. The language appears to be clear, and no doubt plaintiff before signing the contract considered the provisions requiring that the work be performed in a manner satisfactory to the defendant so as to accomplish the purpose provided for, and the safety of the construction work itself, as well as of the men employed in its accomplishment.

The additional compensation claimed by the plaintiff is controverted by the defendant. In the discussion of the items for which extra money is claimed and charged against the defendant for additional pumping of water at the Barry Avenue and Grace street undertaking, which is alluded to in this opinion, the contract itself provides that the plaintiff shall pump the water interfering with the work in progress; that it is a part of the work required, and that the plaintiff is not entitled to extra compensation. In doing the work in connection with the tunneling under the river bed, it was contemplated and is a part of the contract, that cofferdams might be used in order to properly install the several sewers under the Chicago River bed.

The plaintiff no doubt understood what it was undertaking to do, and it must have understood the character and nature of the work. If it was not familiar with the language used in the contract, then it should not have signed the contract.

Much is said in plaintiff's brief regarding the profiles of the ground shown on the plans; in other words, that such profiles were not correct; that the sample of certain borings and test pits made by defendant misled the plaintiff. When we come to examine the contract in question, it is clear from this examination that the borings and profiles of the ground are not guaranteed, and of course the plaintiff is chargeable with the condition of the ground in which the work provided for was to be constructed, and certainly there

plaintiff determined the scope of the undertaking. The language of the contract is to be clear, and no doubt plaintiff's belief in the provisions regarding the work to be performed in a manner satisfactory to the defendant is to be assumed. The contract provided for, and the safety of the construction work itself, as well as of the men employed in its accomplishment.

The additional compensation claimed by the plaintiff is controverted by the defendant. In the discussion of the facts for which extra money is claimed and charged against the defendant for additional pumping of water at the early stages and before the undertaking, which is claimed to be in this contract, the contract itself provides that the plaintiff shall keep the water circulating with the work in progress; that it is a part of the work provided, and that the plaintiff is not entitled to extra compensation. In doing the work in connection with the tunneling under the river bed, it was contemplated and is a part of the contract, that defendant might be used in order to properly install the several sewers under the Chicago River bed.

The plaintiff no doubt understood that it was undertaking to do, and it must have understood the character and nature of the work. If it was not familiar with the language used in the contract, then it should not have signed the contract.

Such is said in plaintiff's brief regarding the evidence of the ground shown on the plans; in other words, that such evidence was not correct; that the sample of certain materials and soil was made by defendant against the plaintiff. When we come to examine the contract in question, it is clear from this examination that the purpose and purport of the ground was not guaranteed, and of course the plaintiff is to proceed with the condition of the ground in view the work provided for was to be completed, and certainly there

was nothing to prevent the plaintiff from making an individual examination and test, if he so desired. From the record, there is no indication that misrepresentations were made by the defendant whereby the plaintiff was misled.

Many authorities are called to our attention. However, the plaintiff and the defendant rely upon the case of Day v. United States, 245 U. S. 159, to sustain a part of their contention. In this case, which has a material bearing upon the questions before this court, a contractor brought suit to recover for work and materials furnished to build a bulkhead and temporary dams in order to protect a canal and locks at the cascades of the Columbia River against an extraordinary flood. The contractor in making his bid, was required in the usual way to base his proposal upon his personal investigation and the specifications provided, and the specifications provided that the contractor would --

"be held responsible, without expense to the government, for the preservation and good condition of all the work now in place, and such as he may, from time to time, under this contract put in place, until the termination of the contract, or until the whole work is turned over to the government in a completed condition, as required."

The Government, however, had not guaranteed that the created bulkhead should be sufficient or that it would protect the work while going on. On the contrary, the contract contemplated, in terms, that the contractor might be prevented from commencing or completing the work by freshets or other forces, or violence of the elements, and provided in that event that the representative of the United States might allow such additional time as in his judgment should be just and reasonable, but gave no other relief.

The part of the opinion that we regard as material is:

"One who makes a contract never can be absolutely certain that he will be able to perform it when the time comes,

nothing to prevent the plaintiff from making an individual examination and test, if he so desired. From the record, there is no indication that misstatements were made by the defendant whereby the plaintiff was misled.

Many authorities are cited to support this view. However,

the plaintiff and the defendant rely upon the case of W. V.

United States, 245 U. S. 150, as authority in support of their contention.

In this case, which was a material breach upon the plaintiff's return

this court, a contractor brought suit to recover the value of the

materials furnished to build a railroad and highway from its right

to protect a canal and locks at the entrance of the Columbia River

against an extraordinary flood. The contractor in making his claim

was required in the usual way to base his proposal upon his personal

investigation and the specifications provided, and the specifications

provided that the contractor would -

"be held responsible, without expense to the Government, for the construction and good condition of all the work he is to do, and for the cost of any material or labor which he may use in the construction of the work, until the completion of the contract, or until the work is turned over to the Government in a completed condition, as required."

The Government, however, had not guaranteed that the work would

be completed or that it would protect the work while

going on. On the contrary, the contract contemplated, in terms,

that the contractor might be prevented from completing or maintaining

the work by floods or other forces, or violence of the elements,

and provided in that event that the representative of the United

States might after such additional time as in his judgment should be

just and reasonable, but give no other relief.

The part of the opinion that we regard as material is:

"One who makes a contract never can be absolutely certain that he will be able to perform it over the time named."

and the very essence of it is that he takes the risk within the limits of his undertaking. The modern cases may have abated somewhat the absoluteness of the older ones in determining the scope of the undertaking by the literal meaning of the words alone. . . . But when the scope of the undertaking is fixed, that is merely another way of saying that the contractor takes the risk of the obstacles to that extent. *Carnegie Steel Co. v. United States*, 340 U. S. 156, 164. *Glabe Refining Co. v. Landa Cotton Oil Co.*, 190 U. S. 540, 543, 544. There can be no doubt of the scope of the undertaking in this case. If the unqualified agreement to complete the work were not enough by itself, *Chicago, Milwaukee & St. Paul Ry. Co. v. Hoyt*, 149 U. S. 1, 14, 15, the provisions to which we have referred would make it plain. . . .

It follows, without the need of referring to clauses in the contract excluding claims for extra work, that if the claimants put up temporary defences against the order, even though not bound to do so by the contract, they were doing what it was for their own interest and safety to do, and that in the absence of an actual contract to pay for it by the other party there is no ground for shifting the cost on to the United States."

The plaintiff contends that the Sanitary District had ratified and approved the engineer's stopping of tunnel construction and ordering the cofferdam work and the District is estopped from asserting that its Chief Engineer lacked authority to bind it. In support of this contention the plaintiff cites, among other cases, that of Great Lakes Bridge Co. v. Chicago, 225 Ill. 514, wherein the plaintiff sued for extra compensation for additional work of constructing cofferdams and flumes, and the court held that a provision in a written contract requiring specific authorization from the City Council for making payment for alterations due to an unprecedented rise in the water level which alterations increased the expense of the work, does not apply to additional work of constructing cofferdams and flumes, and that by accepting the work the city is estopped. Now, in the instant case, the extra compensation involved is not for constructing ~~xxxxxx~~ cofferdams, but as we have indicated in this opinion, it was clearly the intention of the parties

[illegible]

1. The purpose of this document is to provide information regarding the proposed changes to the [illegible] and to seek public input on these changes.

See Special Services for your nearest Travelodge.

and the fact that the Government has not been able to obtain the necessary information to determine the extent of the damage to the property of the Government.

© 2001 Blackwell Science Ltd *Journal of Internal Medicine* 250: 105–112

[illegible]

the witness of the north, and the witness of the south.

Copyright © 1999 by John Wiley & Sons, Inc.

SECRET

cofferdams
that ~~thence~~ might be used in the construction of the work. Then,
again, there is nothing in the record which would indicate that
the defendant by its agent ever agreed to pay extra compensation
to the plaintiff. The plaintiff accepted the work, and there
seems to be no evidence which would justify the allowance of the
extra compensation for the work performed within the contemplation
of the contract, and such being the circumstances, the opinion
of the Supreme Court does not apply, as the facts and circumstances
in this case are different.

The judgment of the Circuit Court of Cook County is
therefore reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

HALL, P.J. AND DENIS E. SULLIVAN, J. CONCUR.

37634

PETER L. EVANS, as Successor Trustee,
et al.,

(Complainants) Appellants,

v.

TONY MATTIO, et al.,

(Defendants) Appellees.

SAM SIER,

(Complainant) Appellee,

v.

TONY MATTIO, et al.,

(Defendants) Appellees.

APPEAL FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 633

CONSOLIDATED CAUSE.

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This is an appeal to this court by the complainant Peter L. Evans from an order entered in the Superior Court of Cook County, Illinois, in a consolidated foreclosure proceeding, sustaining the objections of the holders of bonds, secured by the trust deed being foreclosed, to the approval of the Master's report of sale in this proceeding.

From the record it appears that about October 27, 1931, the Home Bank and Trust Company, as trustee under the trust deed, filed its bill of complaint to foreclose the trust deed; that about the same time one Sam Sier, as the owner and holder of certain bonds secured by said trust deed, also filed a bill of complaint to foreclose the trust deed securing the same bonds. The Home Bank and Trust Company as the original trustee under the deed of trust, resigned, and Peter L. Evans, by the terms of said trust deed, succeeded the Home Bank and Trust Company as trustee, and was substituted as complainant in the proceedings. The two cases were then consolidated and proceeded to the entry of a decree of foreclosure.

PETER L. WYATT, as Successor Trustee,
et al.,
(Defendants) Appellants

1933

1933

1933

(Defendants) Appellants

1933

(Complainant) Appellee

1933

1933

(Defendants) Appellants

Opinion filed Nov. 20, 1933

MR. JUSTICE BRADTHORN delivered the opinion of the court.

This is an appeal to this court by the complainant Peter L. Evans from an order entered in the Superior Court of Cook County, Illinois, in a consolidated foreclosure proceeding, sustaining the objection of the holders of bonds, secured by the trust deed being foreclosed, to the approval of the master's report of sale in this proceeding.

From the record it appears that about October 25, 1931, the Home Bank and Trust Company, as trustee under the trust deed, filed its bill of complaint to foreclose the trust deed; that about the same time one Sam Rier, as the owner and holder of certain bonds secured by said trust deed, also filed a bill of complaint to foreclose the trust deed securing the same bonds. The Home Bank and Trust Company as the original trustee under the deed of trust, resigned, and Peter L. Evans, by the terms of said trust deed, succeeded the Home Bank and Trust Company as trustee, and was appointed as complainant in the proceedings. The two cases were then consolidated and brought to the entry of a decree of sale.

The decree contains a finding that the defendants and the mortgagors were indebted to Peter L. Evans, as successor trustee, for the benefit of the owners and holders of bonds unpaid and secured by the trust deed, amounting to \$17,311.35; that the defendants and the mortgagors defaulted in the payment of the sum found to be due by the decree.

Thereupon the Master in Chancery published notice of sale of the premises, and the sale was held on February 9, 1934. No bidders being present other than the complainant as successor trustee, he as the legal representative of the holders of the bonds secured by the trust deed, bid the sum of \$18,000 for said property, and used the amount of the decreed debt found to be due, in payment of his bid.

The Master filed his report of sale, on March 30, 1934, and thereafter on April 30, 1934, complainant Sam Sier, upon an order granted by the court, filed objections to the approval of the Master's report of sale, which were sustained. In substance, the objections are: (1) that the trustee-complainant was not empowered to bid in the property for the bondholders, either by the terms of the trust deed or of the decree; (2) that the said trustee-complainant had no right to use the decreed debt in payment of his bid, and (3) that the trustee-complainant had not produced any bonds or other evidences of indebtedness under the trust deed, in payment of his bid.

Thus, the sole question presented by this appeal is whether or not the court erred in denying the motion of the trustee-complainant for the approval of the Master's report of sale, and in sustaining the objections of the complainant-appellee to such report of sale.

It is the theory of the complainant, Peter L. Evans, that as trustee under the trust deed foreclosed in this cause he had, in the

The decree contained a finding that the mortgage and the mortgage were indebted to Peter L. Evans, as trustee, for the benefit of the owner and holders of bonds issued and secured by the trust deed, amounting to \$17,111.16; that the mortgage and the mortgage defaulted in the payment of the same bond as to the by the decree.

Thereupon the Master in Chancery published notice of sale of the premises, and the sale was held on February 9, 1934. No bidders being present other than the complainant as successor trustee, he as the legal representative of the holders of the bonds secured by the trust deed, bid the sum of \$16,000 for said property, and used the amount of the same to pay the bond, in payment of his bid.

The Master filed his report of sale, on March 30, 1934, and thereupon on April 20, 1934, complainant was given, upon an order granted by the court, filed objections to the approval of the Master's report of sale, which were sustained. In substance, the objections are: (1) that the trustee-complainant was not empowered to bid in the property for the bondholders, either by the terms of the trust deed or of the decree; (2) that the said trustee-complainant had no right to use the decreed debt in payment of his bid, and (3) that the trustee-complainant had not produced any bonds or other evidence of indebtedness under the trust deed, in payment of his bid.

Thus, the sole question presented by this appeal is whether or not the court erred in denying the motion of the trustee-complainant for the approval of the Master's report of sale, and in sustaining the objections of the complainant-cancelled to such report of sale. It is the theory of the complainant, Peter L. Evans, that as trustee under the trust deed foreclosed in this case he had, in the

absence of bidders at the foreclosure sale, the right to bid in the mortgaged property as the legal representative of all the holders and owners of the evidences of indebtedness secured thereby for their use and benefit, even though the trust deed or decree did not expressly confer such power or right upon him; that in so bidding he was preserving the mortgaged premises and was expediting the foreclosure proceedings by commencing the running of the period of redemption, to the end that ultimate ownership of the property in the beneficiaries of the trust would be hastened.

So, upon consideration of the power of the trustee to bid, we find the admission by the complainant that no power was granted by the terms of the trust deed authorizing the trustee to bid at the sale of the mortgaged premises.

A like question was before the Supreme Court, in the case of Chicago Title & Trust Co. et al. v. Leslie M. Bamburg, et al., Docket No. 22921, filed at the February Term, 1935, and the court held that unless the power is granted by the trust deed to the trustee to bid, he will not be authorized to offer a bid for and on behalf of the bondholders for the premises, and offer in payment the defaulted bonds mentioned in the foreclosure proceeding.

The language of the Supreme Court seems to dispose of the question before this court, and we will follow the rule announced in its opinion. The court said:

"No express provision is to be found in the trust deed conferring upon the trustee the right to bid for the trust property at a foreclosure sale or conferring any power upon the court to direct the trustee to bid or to fix an upset price. In addition to the usual powers relating to the payment of taxes, insurance, repairs and liens, the trustee was restricted by the terms of the trust deed, upon certain defaults, to 'either foreclose or enforce the rights of the trustee and bondholders by appropriate proceedings.' The trust deed and bonds constitute a contract between the

absence of bidder at the foreclosure sale, the right to bid in

the mortgaged property as the legal representative of all the

holders and owners of the evidence of indebtedness secured thereby

for their use and benefit, even though the trust deed or mortgage did

not expressly confer such power or right upon him; that in so

acting he was preserving the mortgage proceeds and was exercising

the foreclosure proceedings by commencing the running of the

period of redemption, to the end that ultimate ownership of the

property in the beneficiaries of the trust would be preserved.

So, upon consideration of the power of the trustee to bid,

we find the submission by the commission that no power was granted

by the terms of the trust deed authorizing the trustee to bid at

the sale of the mortgaged premises.

A like question was before the Supreme Court, in the case

of Citizens Title & Trust Co. v. Lumber & Building Co.

Docket No. 23321, filed at the February Term, 1929, and the court

held that unless the power is granted by the trust deed to the

trustee to bid, he will not be authorized to offer a bid for and on

behalf of the beneficiaries for the proceeds, and offer in payment the

retained bonds mentioned in the foreclosure proceeding.

The language of the Supreme Court seems in dispute of the

question before this court, and we will follow the rule announced

in its opinion. The court said:

"The express provision is to be found in the trust deed authorizing upon the trustee the right to bid for the trust property at a foreclosure sale or continuing the mortgage loan the trust to bid at the sale of the property. In addition to the usual powers relating to the payment of taxes, insurance, repairs and interest, the trustee was restricted by the terms of the trust deed, and certain other powers or authority on behalf of the beneficiaries by appropriate provisions. The trust deed and bonds constitute a contract between the

bondholders themselves, between them as a class and the Robins and the trustee, for they were made at approximately the same time as a part of one transaction. The general rule is that they should be construed together as a single instrument. (*Oswianze v. Bengler & Mandell*, 358 Ill. 302; *Crandall v. Borg*, 198 id. 48). An express statement is not found in the contract between the parties that the trustee shall foreclose on the trust estate and bid at the sale thereof in behalf of the owners and holders of the bonds. The language of the contract, by implication, does not clothe the trustee with power, under the guise of a right, duty or obligation, to bid, as a necessary or incidental act, in order that it may carry out the express objects of the contract. The powers granted to a trustee in a deed of trust are not liberally construed and their exercise must be consonant with the terms of that instrument. (*Iowa Light, Heat and Power Co. v. First Nat. Bank of Boston*, 250 Mass. 353, 145 N. E. 433.) Those powers, furthermore, exist only in the terms creating the trust and no others. (3 *Ferry on Trust and Trustees*, (7th ed) sec. 603g, p. 1027.) Since the contract was carefully drawn and made provision for many contingencies, it may safely be presumed that none of the parties intended that something in addition to its provisions should govern the trustee. This court does not have the power to import into a contract other or additional provisions. To do so would be making a new contract for the parties. (*Burt v. Garden City Sand Co.* 237 Ill. 473.) We cannot construe a contract along the line of what we might believe would be a better contract for the parties to make, as equity vests no wide discretion in the chancellor such as would permit him to disturb contract rights of property. (*Merchants Loan and Trust Co. v. Chicago Railways Co.* 158 Fed. 923, C. C. A. 7th, 1907.) A contract right is a property right. (*Kneeland v. American Loan and Trust Co.* 136 U. S. 89, 34 L. ed. 379). Since the rights, duties and obligations of the trustee were contained and defined solely in the trust deed, its duty as trustee was simply to sell the property to satisfy the debt. *Darst v. Bates*, 95 Ill. 493."

As the rule to which we have just referred disposes of the question before us, we will affirm the order entered in the Superior Court of Cook County sustaining the objections of Sam Bier, appellee, to the Master's report of sale.

ORDER AFFIRMING THE OBJECTIONS TO THE
MASTER'S REPORT OF SALE AFFIRMED.

HALL, P.J. CONCURS,
DENIS E. SULLIVAN, J. TOOK NO PART.

37835

GARFIELD WILLIAM ANDREWS,
Plaintiff in Error,
v.

THE SANITARY DISTRICT OF CHICAGO,
a Municipal Corporation, et al.,
Defendants in Error.

WRIT OF ERROR TO

SUPERIOR COURT

COOK COUNTY.

282 I.A. 634¹

Opinion filed Nov. 20, 1935

MR. JUSTICE REBEL DELIVERED THE OPINION OF THE COURT.

The plaintiff by writ of error seeks to review a judgment entered by the court for the defendants upon a directed verdict to the jury. The plaintiff instituted suit for personal injuries against the defendants, The Sanitary District of Chicago, a municipal corporation, T. J. Forschner Contracting Company, a corporation, Dowdle Brothers Co., a corporation, and Frank W. Johnson, Henry B. Johnson, and Marvin A. Johnson, individually and as co-partners, doing business as Johnson Bros. Heating Company. Upon the issues being joined by the parties to the litigation, the cause was heard before the court, with a jury. At the close of the plaintiff's case, the plaintiff on motion dismissed the defendants Dowdle Brothers Co. and Frank W. Johnson, Henry B. Johnson and Marvin A. Johnson, individually and as co-partners. The trial court thereupon directed the jury to return a verdict finding the defendants, The Sanitary District of Chicago, and T. J. Forschner Contracting Company, not guilty. Upon this verdict the judgment sought to be reviewed was entered.

The first contention urged by the plaintiff is that the court erred in directing a verdict for the defendants at the close of the plaintiff's case. The rule by which the court is governed upon a motion such as was made in this case is announced by the Supreme Court in the case of Libby-McNeill & Libby v. Cook, 222 Ill. 206, wherein the court said:

"In either case, if there is no evidence, or but a scintilla of evidence, tending to prove the material averments of the declaration, the jury should be directed to return a verdict for the defendant. If, however, there is in the record any evidence from which, if it stood alone, the jury could 'without acting unreasonably in the eye of the law' find that all the material averments of the declaration had been proven, then the case should be submitted to the jury."

In order to apply the rule just quoted, it will be necessary to consider the evidence in the record to determine whether upon the proof offered by the plaintiff, if standing alone, the jury could reasonably find that the material averments of the declaration had been established. In doing so the court will consider the evidence offered by the plaintiff in its most favorable light. The facts are, substantially, that prior to 1930, the Sanitary District of Chicago, a municipal corporation, entered into contracts for the erection of a sewage treatment plant on the west side of Chicago, in the Village of Stickney, Illinois. These contracts for the sewage works provided for the construction of numerous buildings, and also for the digging of certain tunnels and galleries.

The general contract was entered into with the defendant, Forschner Construction Company, which provided for the construction work required to be done by it. By certain provisions of the contract the defendant Construction Company agreed that the construction and methods used would not relieve the contractor of any responsibility in the construction and safety of the work by the methods employed, or in the use of structures or equipment furnished by him.

The contract further provided that the contractor should take any precautions necessary to render the work secure, and to decrease accidents from any cause, and should provide safe means of access to all points where work was being performed.

"In either case, if there is no evidence, or but a
scintilla of evidence, tending to prove the material
statements of the declarant, the jury should be
directed to return a verdict for the defendant. If,
however, there is in the record any evidence from
which, in the eyes of the jury, it could be said
that the declarant was in the eye of the law, then
all the material statements of the declarant should
be submitted to the jury."

In order to apply the rule just stated, it will be neces-
sary to consider the evidence in the record to determine whether
upon the proof offered by the plaintiff, it standing alone, the
jury could reasonably find that the material statements of the
declarant had been established. In doing so the court will
consider the evidence offered by the plaintiff in its most favorable
light. The facts are, substantially, that prior to 1935, the
Sanitary District of Chicago, a municipal corporation, entered into
contracts for the erection of a sewage treatment plant on the west
side of Chicago, in the Village of Stickney, Illinois. These con-
tracts for the sewage works provided for the construction of numerous
buildings, and also for the digging of certain tunnels and pipelines.
The general contract was entered into with the defendant,
Foran Construction Company, which provided for the construction
work required to be done by it. By certain provisions of the con-
tract the defendant Construction Company agreed that the construction
and methods used would not relieve the contractor of any responsibility
in the construction and safety of the work by the methods employed,
or in the use of substances or equipment furnished by him.
The contract further provided that the contractor should
also any provisions necessary to render the work secure, and to
prevent accidents from any cause, and should provide safe means of
access to all points where work was being performed.

The contract also provided that the contractor should provide and maintain at his own expense roadways or other means of obtaining access to the work, which could be used by the Sanitary District or other contractors engaged in the work, and the contractor should have reasonable use of the existing roadways, including those built by other contractors.

The tunnel provided for and which the contractor defendant was engaged to construct, ran east and west a distance of over one thousand feet. There were lateral tunnels crossing this main tunnel, which lateral tunnels ran north and south, and were called galleries. Above the tunnels at various spots were located various buildings. Battery A consisted of a series of three buildings, and Battery B consisted of a series of another three buildings. Each of the lateral galleries crossed the tunnel at a point approximately under one of the buildings. In these galleries were ladders, one on the east wall and one on the west wall, which led to a platform by which a person could reach the ejector house located on the surface of the ground. The tunnels were used both for passageway, and for the purpose of conduit for pipes. The pipes carried steam, sewage, etc., and the tunnel and the galleries so connected the buildings of the two batteries. In the construction of the galleries the floors of the galleries were a few feet higher than the floor of the main tunnel into which they led. At a point just before the entrance to the main tunnel from the gallery, the pipes in the gallery dipped underground. In the gallery known as Number 4, the place where the accident happened, there was a pit or hole at the place where the pipes dipped underground. This pit covered the entire gallery going from one side of the gallery to the other wall on the other side, and was approximately five feet deep. The pipes dipped into the pit at a point practically adjacent to the three steps that led

The contract also provided that the contractor should provide and maintain at his own expense temporary or other means of obtaining access to the work, which could be used by the military district or other contractors engaged in the work, and the contractor should have reasonable use of the existing roadways, including those built by other contractors.

The tunnel provided for and which the contractor had engaged to construct, ran east and west a distance of over one thousand feet. There were lateral tunnels crossing this main tunnel, which lateral tunnels ran north and south, and were called galleries. Above the tunnels at various spots were located various buildings. Battery A consisted of a series of three buildings, and Battery B consisted of a series of another three buildings. Each of the lateral galleries crossed the tunnel at a point approximately under one of the buildings. In these galleries were lanterns, one on the east wall and one on the west wall, which led to a platform by which a person could reach the ejection house located on the surface of the ground. The tunnels were used both for passage, and for the purpose of carrying for pipes. The pipes carried steam, sewage, etc., and the tunnel and the galleries connected the buildings of the two batteries. In the construction of the tunnel the floor of the galleries was a few feet higher than the floor of the main tunnel into which they led. At a point just before the entrance to the main tunnel from the gallery, the pipes in the gallery dipped underground. In the gallery known as Number 4, the place where the accident happened, there was a pit or hole at the place where the pipes dipped underground. This pit covered the entire gallery going from one side of the gallery to the other wall on the other side, and was approximately five feet deep. The pipes dipped into the pit at a point practically adjacent to the three steam lines

from the main tunnel into the gallery. The pit was so located that a person walking up the steps to go to the ladder would have to step across the pit. On the day of the accident there was some natural light coming into this gallery Number 4, through a grating or vault located in the top of the gallery, at a point leading to the ejector house.

The evidence tends to show that the construction had been completed on the buildings in what was known as Battery B, but there was some work left to be done in the tunnel. There was some inspection work, some electrical work, minor piping and the placing of the gratings and the opening and cleaning of the lateral tunnel.

The pit in gallery Number 4, where the accident occurred, had some boards across it, but was not covered by iron grating. The contractor dug the tunnel under contract for the construction of the tunnel, and the construction of the trench or open pit was also included as part of this general contract.

The plaintiff was engaged in the business of selling and installing screens, and usually did so under a contract made with the firm of Higgins Manufacturing Company. This same company also had a contract with the Sanitary District of Chicago, and with some of the sub-contractors under the contract made with Forscherer Brothers for the installation of the screens.

At the time the plaintiff was in the tunnel he had to obtain measurements and send them to the factory to make the screens required. The plaintiff had installed screens on all the buildings, except the three buildings of Battery B, the point under these buildings where the accident happened. Two or three days before May 19, 1930, Finlayson, who was the architect in charge of the architectural department of the Sanitary District, called the plaintiff by telephone. The plaintiff recognized his voice and Finlayson

from the main tunnel into the gallery. The air was so loaded that a person walking up the steps to the ladder would have to stop across the air. On the day of the accident there was some natural light coming into this gallery through a grating or vent located in the top of the gallery, at a point leading to the gallery tunnel.

The evidence tends to show that the construction had been completed on the building in what was known as Gallery B, but there was some work left to be done in the tunnel. There was some investigation work, some electrical work, some piping and the placing of the grating and the opening and closing of the ladder tunnel. The pit in Gallery Number 4, where the accident occurred, had some boards across it, but was not covered by iron grating. The contractor dug the tunnel under contract for the construction of the tunnel, and the construction of the tunnel as given him was also included as part of this general contract.

The plaintiff was engaged in the business of selling and installing systems, and usually did so under a contract with the firm of Machine Manufacturing Company. This same company also had a contract with the Kentucky District of Chicago, and with some of the sub-contractors under the contract made with the Government for the installation of the system.

At the time the plaintiff was in the tunnel he had to obtain measurements and send them to the factory to make the necessary repairs. The plaintiff had installed systems on all the buildings, except the State Building of Detroit at the time when these buildings were the accident happened. Two or three days before May 18, 1930, the plaintiff, who was the president in charge of the installation of the system, called the plaintiff by telephone. The plaintiff recognized his voice and the plaintiff

asked the plaintiff when they were going to get the balance of the screens. Plaintiff told him that they had all the measurements for the windows but that it was necessary for him to get out to the plant and get the measurements for the doors. Plaintiff informed Finlayson that he had been out there on the premises when it was raining and plaintiff found it almost impossible to get around to the buildings through the mud. He was then advised by Finlayson that there was a tunnel out there, and that the tunnel started in the pump house, and if plaintiff would make inquiry at the place of construction about the tunnel they would tell him about it. There was some conversation regarding the conditions of the buildings, as to the progress of the construction, and whether the sashes were installed and the window frames glazed, and the plaintiff was informed of the progress of the work, and he advised Finlayson that he needed electric power to run the drills to install the screens in the windows and doors.

On May 19, 1930, plaintiff went out to the plant. He arrived there about 11:00 o'clock in the morning, and met a watchman at what is called the pump house, and advised the watchman that he wished to go into the basement where the tunnel was, according to the directions of Finlayson. The watchman directed the plaintiff to the basement, and when the plaintiff got there he met a Mr. Forker, who was a junior engineer of the Sanitary District, working for the operating department. Mr. Forker tried to get in touch with someone to go with the plaintiff into the tunnel, and finally told the plaintiff that he could not find a man to go with the plaintiff. He then advised the plaintiff that he would show him how to get into the tunnel, and Forker took plaintiff into the tunnel and went into the first gallery, leading up to the first building. Before he went into this gallery Forker pointed down the tunnel and informed

called the plaintiff when they were going to get the balance of the
work done. Plaintiff told him that they had all the measurements for
the windows but that it was necessary for him to get out to the
plant and get the measurements for the doors. Plaintiff informed
Minayem that he had been out there on the premises when it was
raining and Plaintiff found it almost impossible to get around to
the buildings through the mud. He was then advised by Minayem
that there was a tunnel out there, and that the tunnel started in
the pump house, and if Plaintiff would make inquiry at the place
of construction about the tunnel they would tell him about it.
There was some conversation regarding the conditions of the building,
as to the progress of the construction, and whether the windows
were installed and the window frames glazed, and the plaintiff was
informed of the progress of the work, and he advised Minayem
that he needed electric power to run the drills to install the
windows in the alcove and doors.

On May 12, 1930, Plaintiff went out to the plant. He
arrived there about 11:00 o'clock in the morning, and met a witness
at what is called the pump house, and advised the witness that he
wished to go into the basement where the tunnel was, according to
the directions of Minayem. The witness allowed the plaintiff
to the basement, and when the plaintiff got there he met a Mr. Barker,
who was a junior engineer of the Kentucky Electric, working for
the operating department. Mr. Barker tried to get in touch with
someone to go with the plaintiff into the tunnel, and finally told
the plaintiff that he could not find a man to go with the plaintiff.
He then advised the plaintiff that he would show him how to get into
the tunnel, and would show Plaintiff later the tunnel and how to
get into the tunnel, leading up to the first building. Barker then
went into this building Barker pointed down the tunnel and showed

the plaintiff that all the galleries out from the tunnel were just the same as the first gallery, and that the plaintiff could go down to the tunnel to any of the buildings that he wanted to by means of the galleries, and to go up the ladder in the gallery the same as it was in the first gallery, and so to go up to any buildings the plaintiff wished to go.

The plaintiff wanted to visit the buildings that were a part of the west group, namely, Battery B. It was on these buildings that the screens were to be installed. The tunnel was light, and Forker inquired of the plaintiff whether he thought he could find his way around, the plaintiff replied that he knew about where those buildings were located, and plaintiff came down the ladder in gallery Number 1 and walked toward the building at the west. As the plaintiff walked towards this part of the tunnel the artificial light was very good. He came to gallery Number 4, the place where he intended to go up to the building to measure the windows and doors for screens. He turned toward the right and saw the ladder to his right in the gallery. There was some light coming in from above, and he took one step toward the ladder when he went down into the pit and was injured.

The fact is that the plaintiff was in the use of the tunnels for the purpose of carrying on the work necessary to install window and door screens, and his presence and use of the tunnels and galleries was permitted by the terms of the contract between the defendant Forschner and the Sanitary District. The defendant under its contract had a duty to perform, which was to provide a safe means of access to all points where the work was being done, in order to insure the safety of workmen, engineers and inspectors, whose presence was necessary during the course of the work. By the same contract the defendant Forschner assumed all responsibility for damages or

the plaintiff lost all the collection and from the tunnel went first
the case as the first gallery, and that the plaintiff would be
down to the tunnel in any of the buildings that he wanted to go
means of the gallery, and to go up the ladder in the gallery the
same as it was in the first gallery, and so on go up to any build-
ings the plaintiff wished to go.

The plaintiff wanted to visit the buildings that were a
part of the west group, namely, to visit No. 11 was on these build-
ings that the second group to be installed. The tunnel was built
and for the purpose of the plaintiff whether he thought he could
find his way around, the plaintiff replied that he knew about where
those buildings were located, and plaintiff came down the ladder
in gallery Number 1 and walked toward the building at the west. As
the plaintiff walked toward this part of the tunnel the artificial
light was very good. He came to gallery Number 4, the place where
he intended to go up to the building to measure the windows and doors
for screens. He turned toward the right and saw the ladder to his
right in the gallery. There was some light coming in from above,
and he took one step toward the ladder when he went down into the
pit and was injured.

The fact is that the plaintiff was in the use of the
tunnels for the purpose of carrying on the work necessary to install
windows and door screens, and his presence was one of the tunnels and
gallery was permitted by the terms of the contract between the
defendant Foremaster and the Sanitary District. The defendant admits
the contract had a duty to perform, which was to provide a safe means
of access to all points where the work was being done, as shown in
plans the safety of workers, employees and passengers, which provided
was necessary during the course of the work. By the same contract
the defendant Foremaster assumed all responsibility for damages or

injuries growing out of any act or deed of the contractor and his employees by reason of the use of the tunnels and galleries.

The purpose of the visit and use of the tunnels by the plaintiff was justified by the contract entered into by the Sanitary District of Chicago with Dowdle Brothers Co. for the construction and furnishing of screens.

It is evident that the pit was an open one and only covered in part by the use of two or three boards placed across the pit at the point where the ladder was located, so that if the plaintiff made use of the tunnels and ladders he would be protected from falling into the opening. The plaintiff was properly in the tunnel on business which was permitted by defendant Forschner's contract with the Sanitary District. Whether the use made of the tunnel by the plaintiff to reach the battery of buildings was a proper or negligent one, was a question for the jury.

The question of contributory negligence on the part of the plaintiff and lack of ordinary care and caution for his own safety is generally for the jury, and is only a question of law when men of reasonable mind would say and agree that the plaintiff was not, at the time and prior to the accident and injuries sustained, in the exercise of due care and caution for his own safety, and as a result was guilty of contributory negligence. Follard v. Broadway Central Hotel Corp., 353 Ill. 312.

Applying the rule stated, the plaintiff's evidence tends to establish the allegations of the declaration, and the facts should have been submitted to the jury. The defendant Forschner Contracting Company, under its contract with the Sanitary District of Chicago, had a duty to perform to persons rightfully upon the premises - that was, to provide a safe passage in the use of the tunnels and ladders, and by analogy the decision of the Supreme Court in the case of Calvert v. Springfield Light Co., 231 Ill. 290, applies.

injuries growing out of any act on the part of the defendant and his employees by reason of the use of the tunnel and platform.

The purpose of the visit and use of the tunnel by the plaintiff was justified by the contract entered into by the defendant District of Chicago with Joseph Starnes Co. for the construction and furnishing of a tunnel.

It is evident that the plaintiff was in a position to know that the use of two or three feet of the tunnel was covered in part by the use of the tunnel and platform as they are at the point where the ladder was located, and that in the plaintiff made use of the tunnel and platform as would be expected from falling into the opening. The plaintiff was properly in the tunnel on business which was permitted by defendant Starnes Co. in contact with the sanitary district. Whether the use made of the tunnel by the plaintiff to reach the vicinity of buildings was proper or negligent one, was a question for the jury.

The question of contributory negligence on the part of the plaintiff and lack of ordinary care and caution for his own safety is generally for the jury, and is only a question of fact when the reasonable mind would say and agree that the plaintiff was not, at the time and prior to the accident and injuries sustained, in the exercise of due care and caution for his own safety, and as a result was guilty of contributory negligence. Illinois v. Starnes Co., 183 Ill. 312.

In the case at bar, the plaintiff's evidence tends to establish the allegations of the defendant, and the facts herein have been submitted to the jury. The defendant's contention that the plaintiff, under the contract with the sanitary district of Chicago, had a duty to perform to persons rightfully upon the tunnel and that was, to provide a safe passage in the use of the tunnel and platform, and by analogy the decision of the Supreme Court in the case of Illinois v. Starnes Co., 183 Ill. 312, applies.

The court there said:

"The law is well settled that an owner or occupant of land who by invitation, express or implied, induces or leads others to go upon premises for any lawful purpose is liable for injuries occasioned by the unsafe condition of the land or its approaches, if such condition was known to him and not to them, and was negligently suffered to exist without timely notice to the public or to those who are likely to act upon such invitation, and if there are hidden dangers upon the premises he must use ordinary care to give persons rightfully upon the premises warning thereof, and that the owner owes such duty to an independent contractor or his servants while working upon his premises."

In the operation of the work by the Forschner Contracting Company it was its duty, not alone to his employees, but as well to the persons employed by or working for other contractors, to use ordinary care in prosecuting its work in such a way as not to negligently injure the employees of other contractors. Fetzer v. Noel Construction Co., 175 Ill. App. 401.

The law is well settled that when work is being done for an owner by an independent contractor, the owner is not liable for injuries caused by the negligence of such independent contractor. The Sanitary District of Chicago, under its contract with the co-defendant Forschner Contracting Company was constructing the improvement described in the opinion. The Forschner Contracting Company was an independent contractor doing this work, and the Sanitary District of Chicago could only exercise such control as was provided for by the terms of the contract. The manner of doing this work was under the control of the contractor. Its obligation to furnish a safe place to work applies only when the relation of master and servant exists, and not to an owner who has contracted with an independent contractor for the doing of the work, which of course could not be such a relation as master and servant to any person injured. Shaw v. Dorris, 290 Ill. 196. This being the undoubted rule which applies to the relationship created by the contract between the Sanitary District of

The court there said:

"The law is well settled that an owner of a chattel, or land, who by invitation, express or implied, induces or leads others to go upon premises for any lawful purpose is liable for injuries occasioned by the unsafe condition of the land or the appliances, if such condition was known to him and not to them, and was negligently suffered to exist without notice to the public or to those who are likely to go upon such invitation, and if there are hidden dangers upon the premises of which the invitee is not to give warning vigilantly when the premises remain uninvited, and that the owner owes such duty to anyone who enters upon his premises while invited upon his premises."

In the operation of the work by the Foreman Contracting Company it was its duty, not alone to its employees, but as well to the persons employed by or working for other contractors, to use ordinary care in protecting its work in such a way as not to negligently injure the employees of other contractors. Idaho v. Foreman Contracting Co., 177 Ill. 141, 142.

The law is well settled that when work is being done for an owner by an independent contractor, the owner is not liable for injuries caused by the negligence of such independent contractor. The Tenth Circuit of Chicago, under its contract with the Foreman Contracting Company was contracting for the Foreman Contracting Company. The Foreman Contracting Company was not described in the opinion. The Foreman Contracting Company was an independent contractor doing this work, and the Tenth Circuit of Chicago could only exercise such control as was provided for by the terms of the contract. The manner of doing this work was under the control of the contractor. Its obligation to furnish a safe place in which to work applied only when the relation of master and servant existed, and not to an owner who has contracted with an independent contractor for the doing of the work, which of course would not be such a relation as master and servant to any person injured. Idaho v. Foreman Contracting Co., 177 Ill. 141. This being the uncontroverted fact which applies to the relationship created by the contract between the Tenth Circuit of

Chicago and the Forschner Contracting Company, it is clearly established by the contract that the defendant Forschner Contracting Company, is an independent contractor doing work for the Sanitary District of Chicago. The failure of the contractor to furnish a safe place for the plaintiff, who was rightfully upon the premises, and which resulted in injury to him, does not create any liability as against the Sanitary District of Chicago, and the judgment as to this defendant is affirmed. As to the defendant, Forschner Contracting Company, the judgment is reversed and remanded. Under the Civil Practice Act this court may affirm a judgment as to one defendant and reverse it as to another. ch. 110, sec. 92 (f). Minnis v. Friend, 390 Ill. 328.

JUDGMENT AFFIRMED IN PART AND
REVERSED AND REMANDED IN PART.

HALL, P. J. CONCURS
SULLIVAN, DENIS E., J. TOOK NO PART.

Chicago and the Foreman Contracting Company, it is clearly
 established by the contract that the defendant Foreman Con-
 tracting Company, is an independent contractor dealing with the
 the Sanitary District of Chicago. The failure of the contractor
 to furnish a safe place for the plaintiff, who was rightfully
 upon the premises, and which resulted in injury to him, does
 not excuse any liability as against the Sanitary District of
 Chicago, and the judgment as to this defendant is affirmed.
 as to the defendant, Foreman Contracting Company, the judgment
 is reversed and remanded. Under the Civil Practice Act this court
 may affirm a judgment as to one defendant and reverse it as to
 another. Ch. 110, sec. 92 (2). Winds v. Wind, 300 Ill. 385.

JUDGMENT AFFIRMED IN PART
 REVERSED AND REMANDED IN PART.

ALL W. A. BROWN
 BUREAU, CHICAGO ILL. A COURT OF LAW.

37961

JOHN J. WARD, etc.,

(Plaintiff) Appellee,

v.

BUNKER HILL COUNTRY CLUB, a
Corporation,

(Defendant) Appellant.

APPEAL FROM

CIRCUIT COURT

COOK COUNTY.

2821.A.634²

Opinion filed Nov. 20, 1935

MR. JUSTICE REBEL DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment for the plaintiff in the sum of \$710, recovered in an action upon a contract for legal services to the defendant.

The declaration alleges that the plaintiff entered into a verbal contract with the president of the defendant corporation for services of the plaintiff to act as attorney for the defendant for the year 1930, for which the president agreed to pay the sum of \$1,000, and that in compliance with such contract the plaintiff rendered such services to the defendant.

The declaration further alleges that the defendant paid to the plaintiff on account of such contract \$350 and credited the plaintiff's account with the further sum of \$40.00, leaving a balance due upon the contract of \$710.

The defendant's amended affidavit of merits states substantially, that the president of the defendant company was without power to enter into any contract with the plaintiff, as alleged; that such power under defendant's by-laws is vested only in the Board of Directors, and that the president was never empowered to retain the services of the plaintiff; that the defendant did not contract with the plaintiff to act as its attorney for the year 1930, and did not agree to pay \$1,000 to the plaintiff for such services.

A trial was had before the court, and judgment was entered

• Indigenous (Native)

Opinion filed Nov. 20, 1932

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the results of its investigation of the activities of the American Friends Service Committee in the United States.

WALL JOURNALIST - MUST BE INTERVIEWED WITH US BEFORE HE CAN START

the plaintiff in the sum of \$100,000, payable in 10 equal annual installments of \$10,000 each.

contract for legal services to the defendant.

The decision states that the plaintiff cannot sue.

most negroes identified said to dissimulate and their reactions led to a

For services of the Plaintiff to the Defendant and the Defendant to the Plaintiff

For the year 1988, for which the President agreed to pay the sum

100-443887-100

RECEIVED

E. coli O157:H7 was isolated from ground beef samples collected at retail outlets in the United States during the outbreak period.

<http://www.citigroup.com/citibank/online/online.htm>
<http://www.citigroup.com/citibank/online/online.htm>

...the ...

The defendant's mental condition at the time of the

Specifically, that the President of the National Security Council, who is the President of the United States, is the President of the United States.

and ; and I am , indeed , all the comfort you can wish to have

SECRET

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-11-2010 BY 60322 UCBAW

THE UNIVERSITY OF CHICAGO PRESS

...to the

A Will was read before the court, and judgment was rendered.

2
upon the verdict of the jury for the amount claimed. The evidence by the plaintiff is to the effect that he made a verbal contract with the president of the corporation to render services for the year 1930, for which he was to be paid \$1,000. The president of the defendant company testified as a witness. From his evidence it appears that he denied making such a contract with the plaintiff for legal services. The defendant offered evidence that the plaintiff had knowledge of the by-laws of the defendant corporation; and also offered the by-laws in evidence, which were identified by witnesses. This offer of testimony and the by-laws, was objected to by the plaintiff, and the objection of the plaintiff was sustained by the court.

The contention of the defendant is that the court erred in refusing to admit as evidence knowledge of the plaintiff of its by-laws, and also the by-laws. There is evidence that the plaintiff appeared and acted in the organization of the defendant corporation, and assisted and was present when the by-laws were amended and adopted, and in fact was present at a number of meetings of the Board of Directors. The by-laws produced and offered by the defendant were identified as the by-laws of the defendant by the president of the corporation.

The fact that the minutes and by-laws were produced and identified was sufficient, and the court should have admitted in evidence the by-laws of the defendant corporation. If the plaintiff had knowledge of the by-laws, this knowledge was proper evidence for the jury. The defendant was an incorporated company, and it is evident that the president could exercise only such power as was granted by the by-laws to enter into contracts. The by-laws not being in evidence, the defendant was denied the right to question the authority of the president to act in the matter. The plaintiff, however asserts

upon the verdict of the jury for the amount claimed. The evidence by the plaintiff is to the effect that he made a verbal contract with the president of the corporation to render services for the year 1930, for which he was to be paid \$1,000. The president of the defendant company testified as a witness, from his evidence it appears that he denied making such a contract with the plaintiff for local services. The defendant offered evidence that the plaintiff had knowledge of the by-laws of the defendant corporation; and also offered the by-laws in evidence, which were identified by witnesses. This offer of testimony and the by-laws, was objected to by the plaintiff, and the objection of the plaintiff was sustained by the court.

The contention of the defendant is that the court erred in refusing to admit as evidence knowledge of the plaintiff of its by-laws, and also the by-laws. There is evidence that the plaintiff appeared and acted in the organization of the defendant corporation, and assisted and was present when the by-laws were amended and adopted, and in fact was present at a number of meetings of the Board of Directors. The by-laws produced and offered by the defendant were identified as the by-laws of the defendant by the president of the corporation.

The fact that the minutes and by-laws were produced and identified was sufficient, and the court should have admitted in evidence the by-laws of the defendant corporation. If the plaintiff had knowledge of the by-laws, this knowledge was proper evidence for the jury. The defendant was an incorporated company, and it is evident that the president could exercise only such power as was granted by the by-laws to enter into contracts. The by-laws not being in evidence, the defendant was denied the right to question the authority of the president to act in the matter. The plaintiff, however, was not denied the right to question the authority of the president to act in the matter.

that by the by-laws offered in evidence, the president had authority to enter into the contract in question, and points to the sections of the by-laws to sustain his position.

The difficulty in this situation is that upon the objection of the plaintiff the trial court refused to admit the by-laws in evidence, and therefore the only question for this court to pass upon is whether the trial court's ruling was proper. This court in the case of Traders Ins. Co. v. Catlin, 71 Ill. App. 569, in passing upon the practice in the Appellate Court, held that this court cannot consider rejected evidence in order to sustain the theory of the plaintiff's case, and in that opinion upon this question the court said:

"We are not aware of any rule by which we could lawfully take into consideration the rejected testimony and base our final finding of the facts upon all the testimony, both that received and that rejected. We can only determine whether the court erred in its rulings upon the testimony, and whether the court correctly found the facts from the evidence which it admitted."

Therefore, the material question here to be determined is whether the court erred in rejecting the offered evidence of the by-laws and thereby denying the plaintiff the right to call this Court's attention to the various sections of the by-laws in order to question the authority of the president to act for the corporation as he did. We believe this evidence was material and the court should have admitted it, in view of the fact that the plaintiff in order to sustain his position, contends that the president had ample authority to engage the plaintiff for his legal services. If the president of the defendant company was without authority to enter into this contract with the plaintiff, the fact that the plaintiff received a payment from the president would not bind the defendant corporation, unless by its act, through its agent it waived the question of authority.

that by the by-laws offered in evidence, the plaintiff had authority to enter into the contract in question, and would be the defendant of the by-laws to sustain his position.

The difficulty in this situation is that when the objection of the plaintiff the trial court refused to admit the by-laws in evidence, and therefore the only question the case would be upon is whether the trial court's ruling was proper. This court in the case of Traders Ins. Co. v. Walling, 11 Ill. App. 3d, 100, is passing upon the practice in the appellate court, that that this court cannot consider rejected evidence in order to sustain the theory of the plaintiff's case, and in that opinion upon this question the court said:

"We are not aware of any rule by which we could justify the into consideration the rejected testimony and then take it out of the case and use it to sustain the plaintiff's case. The court erred in its ruling when the testimony was rejected and rejected. We are only concerned with whether the court erred in its ruling when the testimony was rejected and rejected. We are only concerned with whether the court erred in its ruling when the testimony was rejected and rejected."

Therefore, the material question here to be considered is whether the court erred in rejecting the offered evidence in the by-laws and thereby denying the plaintiff the right to call John Thomas' attention to the various sections of the by-laws in order to question the authority of the president to act for the corporation as he did. We believe this evidence was material and the court should have admitted it, in view of the fact that the plaintiff in order to sustain his position, contends that the president had legal authority to engage the plaintiff for his legal services. If the president of the defendant company was without authority to enter into such contract with the plaintiff, the fact that the plaintiff received a payment from the president would not bind the defendant corporation, unless by the by-laws the agent is raised the question of authority.

In view of the fact that the court rejected the evidence, as we have indicated in the opinion, it will be necessary to reverse the judgment and remand the cause for a new trial. Accordingly, the judgment of the Circuit Court is reversed and the cause remanded.

REVERSED AND REMANDED.

HALL, P.J. CONCURS,
SULLIVAN, DENIS E., J. TOOK NO PART.

In view of the fact that the court rejected the evidence
as we have indicated in the opinion, it will be necessary to
reverse the judgment and remand the cause for a new trial. Accord-
ingly, the judgment of the circuit court is reversed and the cause
remanded.

REVEREND J. H. HARRIS.

ALL V. F. HARRIS
REVEREND J. H. HARRIS
REVEREND J. H. HARRIS

38012

JAMES TOZZI, doing business as
JAMES TOZZI & CO.,

Appellant,

v.

AUGUST STOERK, INC.,

Appellee.

APPEAL FROM THE

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 634⁵

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This appeal by the plaintiff is from a judgment entered in the Municipal Court of Chicago in favor of the defendant upon its motion for judgment notwithstanding the verdict returned by the jury upon the trial finding for the plaintiff for \$1,104.03. This action by the plaintiff is upon three promissory notes executed by the defendant on May 5, 1932, each note being for the sum of \$331.04, and payable to the order of the plaintiff successively on July, August and September 1, 1932.

The defendant's defense is: First, that the notes were given for eight carloads of spinach, handled by the defendant and the plaintiff upon a joint account, the profit or loss, if any, to be divided, and that the agreement called for care of spinach of U. S. No. "1" quality; second, that the plaintiff, after notice of the failure of the spinach to grade U. S. No. "1" in quality, promised to send to the defendant other produce to handle on a commission basis, to reimburse the defendant for the loss suffered from the handling of the eight cars of spinach; and third, that there was no consideration by the defendant for the execution of the notes in question.

The evidence in the record clearly demonstrates that the jury's verdict was properly based upon three promissory notes signed by the defendant and delivered to the plaintiff in the

MOORE

JAMES TORREY, doing business as
JAMES TORREY & CO.,

Appellant,

v.

AUGUST STORCK, INC.,

Appellee.

APPEAL FROM THE

SUPREME COURT

OF CHICAGO.

420.13.3

Opinion filed Nov. 30, 1933

MR. JUSTICE BRADLEY delivered the opinion of the court.

This appeal by the plaintiff is from a judgment entered in the Municipal Court of Chicago in favor of the defendant upon its motion for judgment notwithstanding the verdict returned by the jury upon the trial finding for the plaintiff for \$1,100.00. This action by the plaintiff is upon three promissory notes executed by the defendant on May 2, 1932, each note being for the sum of \$333.33, and payable to the order of the plaintiff successively on July, August and September 1, 1932.

The defendant's defense is: First, that the notes were given for eight sacks of spinach, handled by the defendant and the plaintiff upon a joint account, the profit on loss, if any, to be divided, and that the agreement called for sale of spinach of U. S. No. "1" quality; second, that the plaintiff, after notice of the failure of the spinach to grade U. S. No. "1" in quality, refused to send to the defendant other produce to handle on a commission basis, so reimburse the defendant for the loss suffered from the handling of the eight sacks of spinach; and third, that there was no consideration by the defendant for the execution of the notes in question.

The evidence in the record clearly demonstrates that the jury's verdict was properly based upon three promissory notes signed by the defendant and delivered to the plaintiff in the

aggregate amount of \$1,104.02, being for the value of the carloads of spinach sold by the defendant before the execution and delivery of the notes in question to the plaintiff. The defense offered was that the notes were executed without consideration under pressure brought by the plaintiff for payment, and the defense offered by the defendant was clearly an afterthought for the purpose of avoiding payment of the notes.

The trial court, while vested with discretion to set aside a jury's verdict, should not do so where it is evident from the record that the plaintiff is entitled to recover.

The view we have taken upon the merits, does not require this court to consider the other contentions of the plaintiff. We might add that we do not have the advantage of the defendant's brief as to its theory of defense, for no appearance was filed.

The judgment for the defendant is reversed, and judgment for \$1,104.02 upon the jury's verdict will be entered in this court.

JUDGMENT REVERSED FOR DEFENDANT AND JUDGMENT
ENTERED HERE FOR THE PLAINTIFF IN THE SUM OF
\$1,104.02.

HALL, P.J. CONCURS
SULLIVAN, DENIS E., J. TOOK NO PART.

aggregate amount of \$1,104.00, being for the value of the contents of a package sold by the defendant before the execution and delivery of the notes in question to the plaintiff. The defense offered evidence that the notes were executed without consideration and were procured by the plaintiff for payment, and the defense offered by the defendant was directly an attempt to avoid the payment of the notes.

The trial court, while vested with discretion to set aside a jury's verdict, should not do so where it is evident from the record that the plaintiff is entitled to recover.

The view we have taken upon the merits, does not require this court to consider the other contentions of the plaintiff. We might say that we do not have the advantage of the defendant's brief as to the theory of defense, for no appearance was filed. The judgment for the defendant is reversed, and judgment for \$1,104.00 upon the jury's verdict will be entered in this

case.

RECORDED WITHIN FOR DEPOSIT AND JUDICIAL
EXAMINED HERE FOR THE RECORD IN THE YEAR 19
\$1,104.00.

HALL, F. J. CLERK
SULLIVAN, DENIS E., J. DEPT. NO. 121.

38086

ALBERT KAGAN,

(Plaintiff) Appellee,

v.

LONDON GUARANTEE & ACCIDENT COMPANY,
LTD.,

(Defendant) Appellant.

APPEAL FROM THE

MUNICIPAL COURT

OF CHICAGO.

282 L.A. 634⁴

Opinion filed Nov. 20, 1935

MR. JUSTICE REBEL DELIVERED THE OPINION OF THE COURT.

This cause is in this court upon a petition of the defendant for leave to appeal from an order granting a new trial to the plaintiff, and plaintiff's answer thereto. Upon due consideration the motion of the defendant for leave to appeal was allowed, and the cause is now before this court upon the question of whether the trial court erred in its order granting the plaintiff a new trial.

The suit was instituted in the Municipal Court of Chicago by the plaintiff on a policy of insurance issued by the defendant to the plaintiff, in which the defendant agreed to indemnify the insured against loss by robbery, and the members of his family.

The filed statement of claim alleges that a policy of insurance was issued to the plaintiff dated June 1, 1933, upon which a premium was paid; that on January 13, 1934, Kitty Kagan, the wife of the plaintiff, was the victim of a holdup and there was stolen from her person, cash and a diamond ring, which was her property, of the value of \$1,000; that the plaintiff thereafter performed all the conditions provided for by the policy precedent to the liability for loss sustained by the assured.

Upon the trial, defendant admitted the issuance of the policy, the payment of the premium, and that there was a holdup or robbery, but denied in its amended affidavit of merits that the plaintiff performed all the conditions precedent to the liability

RECEIVED
JAN 10 1935

OF THE COURT

(Plaintiff) Appellee,

v.

LONDON GUARANTEE & ASSURANCE COMPANY,
INC.,

(Defendant) Appellant.

8021A.684

Opinion filed Nov. 30, 1935

MR. JUSTICE BRIDGES DELIVERED THE OPINION OF THE COURT.

This case is in this court upon a petition of the defendant for leave to appeal from an order granting a new trial to the plaintiff, and plaintiff's answer thereto. Upon the consideration the motion of the defendant for leave to appeal was allowed, and

the cause is now before this court upon the question of whether the trial court erred in its order granting the plaintiff a new trial. The suit was instituted in the Municipal Court of Chicago

by the plaintiff on a policy of insurance issued by the defendant to the plaintiff, in which the defendant agreed to indemnify the insured against loss by robbery, and the members of his family.

The filed statement of claim alleges that a policy of insurance was issued to the plaintiff dated June 1, 1932, upon which a premium was paid; that on January 13, 1934, Kitty Rogers, the wife of the plaintiff, was the victim of a holdup and there was stolen from her person, cash and a diamond ring, which was her property, of the value of \$1,000; that the plaintiff thereupon returned all the conditions provided for by the policy precedent to the liability for loss sustained by his insured.

Upon the trial, defendant admitted the issuance of the policy, the payment of the premium, and that there was a holdup on property, but denied in its amended affidavit of merits that the plaintiff returned all the conditions precedent to the liability

of the defendant; in that he failed to comply with paragraph "H" of Sec. II of the policy, which required the filing of a proof of loss under oath within 60 days after the occurrence. It is further stated in the affidavit of merits that the plaintiff had refused to co-operate in that he failed to take action to procure the arrest and prosecution of the offender, and to recover the stolen property; that the property alleged to have been taken was believed by the defendant to have been returned to the possession of the plaintiff, or a member of his family subsequent to the robbery.

The case was tried before one of the judges of the Municipal Court of Chicago and a jury. The jury considered the evidence, and at the close of the hearing, returned a verdict for the defendant. Upon plaintiff's motion, a new trial was allowed by the court.

The questions in this case are largely ones of fact. The plaintiff's wife, Kitty Kagan, was held up and robbed of a diamond ring and some money on January 13, 1934, in the presence of the plaintiff and Mrs. Fannie Pincus, who conducted a delicatessen store at 4335 West Roosevelt Road in Chicago. After the holdup, Mrs. Kagan and the plaintiff, her husband, appeared at the Police Detective Bureau and identified one named John Gordon as the man who robbed Mrs. Kagan of the diamond ring and \$46.00 in money, and Mrs. Kagan signed a statement of the occurrence, in which it is stated that she identified the person known as John Gordon as the perpetrator of the robbery.

Upon the trial of this alleged offender, in the Municipal Court, the plaintiff, as well as Mrs. Kagan, was not sure that John Gordon was the man who committed the robbery, and refused to prosecute him. The evidence is conflicting as to the identification

of the defendant; in that he failed to comply with paragraph "H" of Sec. 11 of the policy, which required the filing of a report of loss under which within 60 days after the occurrence. It is further stated in the affidavit of service that the plaintiff had refused to co-operate in that he failed to take action to procure the arrest and presentation of the offender, and to recover the stolen property; that the property alleged to have been taken was believed by the defendant to have been returned to the possession of the plaintiff, as a member of his family subsequent to the robbery.

The case was tried before one of the judges of the Municipal Court of Chicago and a jury. The jury considered the evidence, and at the close of the hearing, returned a verdict for the defendant. Upon plaintiff's motion, a new trial was allowed by the court.

The questions in this case are largely ones of fact. The plaintiff's wife, Miss Helen, was held up and robbed of a diamond ring and some money on January 12, 1934, in the presence of the plaintiff and Mrs. Lillian Brown, who conducted a delicatessen store at 4325 West Roosevelt Road in Chicago. After the holding, Mrs. Helen and the plaintiff, her husband, appeared at the Police Detective Bureau and identified one named John Brown as the man who robbed Mrs. Helen of the diamond ring and \$25.00 in money, and Mrs. Helen signed a statement of the occurrence, in which it is stated that she identified the person known as John Brown as the perpetrator of the robbery.

Upon the trial of this alleged offense, in the Municipal Court, the plaintiff, as well as Mrs. Helen, was not sure that John Brown was the man who committed the robbery, and refused to prosecute him. The evidence is conflicting as to the identification

of the alleged robber by the plaintiff and Mrs. Kagan. Several persons present in the Detective Bureau of the Police Department at the time John Gordon and others were viewed by Mr. and Mrs. Kagan, testified that the plaintiff and also Mr. Kagan identified the prisoner as the man who committed the robbery.

The owner of the delicatessen store, Mrs. Fannie Pinous, was not sure in her identification of Gordon, although she testified that he looked like the man who committed the crime.

The policy in evidence provides, among other things, the following:

"H. Proof of Loss: Inventory: prosecution. Affirmative proof of loss or damage, under oath, on forms provided by the company, must be furnished to the company, within sixty days of the discovery of such loss or damage. Such proof shall contain, etc. * * * In the event of loss or damage, for which claim is made, the assured shall at the request and expense of the Company, take legal action to procure the arrest and prosecution of the offender and the recovery of the property."

Upon the question of proof of loss sustained by the plaintiff by reason of the commission of the robbery, it appears that the defendant was notified of the loss, and an adjuster for the defendant company talked with Mrs. Kagan about the robbery from her person, and the adjuster prepared a statement in writing of the facts related to him by Mrs. Kagan, which she read and stated was true. It does not appear that the plaintiff was requested to file a statement of loss under oath on the forms provided by the company; nor that the defendant delivered by mail or otherwise, the forms required. There was other evidence regarding the failure to file proof of loss and denial of liability by the defendant.

In this case the question is not raised that the court erred in passing upon the competency of witnesses or the relevancy of evidence presented, nor do the parties urge that the court erred in the giving of instructions to the jury.

at the alleged robbery by the plaintiff and Mrs. Logan. Several persons present in the detective bureau of the Police Department at the time John Logan and others were viewed by Mr. and Mrs. Logan, testified that the plaintiff and also Mr. Logan identified the prisoner as the man who committed the robbery. The owner of the defendant's store, Mr. George Logan, was not sure in her identification of her brother, although she testified that he looked like the man who committed the crime. The policy in evidence provided, among other things, the

following:

"N. Proof of loss: Inventory; prosecution. Affirmative proof of loss or damage, unless oath on form provided by the company, and be furnished to the company, within sixty days of the discovery of such loss or damage. The proof shall contain, etc. "In the event of loss or damage, for which claim is made, the insured shall be required to pay to the company, the local agent or procure the arrest and prosecution of the offender and the recovery of the property."

Upon the question of proof of loss furnished by the plaintiff by reason of the commission of the robbery, it appears that the defendant was notified of the loss, and an adjuster for the defendant company talked with Mrs. Logan about the robbery from the person, and the adjuster prepared a statement in writing of the facts related to him by Mrs. Logan, which she read and stated was true. It does not appear that the plaintiff was requested to file a statement of loss under oath on the form provided by the company; nor that the defendant delivered by mail or otherwise, the form required. There was other evidence regarding the failure to file proof of loss and denial of liability by the defendant.

In this case the question is not raised that the company erred in passing upon the competency of statements of the plaintiff or witnesses presented, nor do the parties urge that the court erred in the giving of instructions to the jury.

The question as to plaintiff's co-operation in the prosecution of the offender and the recovery of the property, and the question of failure to file a proof of loss within sixty days, or the waiver thereof by the acts of the defendant, are questions of fact. The court instructed the jury upon these questions and, as we have stated, no objections were offered by either of the parties to the giving of such instructions, and no doubt the instructions as given were followed by the jury and as a result verdict was rendered for the defendant upon the disputed questions of fact.

It is largely within the discretion of the trial court to grant the plaintiff a new trial after a verdict is rendered by a jury, but when, as in this case, the evidence is largely conflicting and the record free from error, the trial court is not warranted in granting the plaintiff a new trial where the evidence in the record fully justifies the verdict of the jury.

This court will reverse the order entered by the trial court granting plaintiff a new trial, and judgment will be entered upon the verdict returned by the jury finding the defendant not guilty. Jurisdiction to enter such an order is provided for by ch. 110 par. 220, sec. 92 (f), Civil Practice Act, Cahill's Ill. Rev. Stats. 1933.

ORDER REVERSED AND JUDGMENT HERE FOR
THE DEFENDANT.

HALL, P. J. CONCURS.
DENIS E. SULLIVAN, J. TOOK NO PART.

The question as to whether the co-operation in the pro-

secution of the defendant and the recovery of the property, and
the question of failure to file a writ of habeas corpus, and
on the other hand by the state of the defendant, and whether
of fact. The court instructed the jury upon these questions and,
as we have stated, no objections were offered by either of the
parties to the giving of such instructions, and in fact the
instructions as given were followed by the jury and as a result
verdict was rendered for the defendant upon the stated questions
of fact.

It is largely within the discretion of the trial court
to grant the plaintiff a new trial after a verdict is rendered
by a jury, but when, as in this case, the evidence is largely con-
flicting and the record free from error, the trial court is not
warranted in granting the plaintiff a new trial where the evidence
in the record fully justifies the verdict of the jury.

This court will reverse the order entered by the trial
court granting a new trial, and judgment will be entered
upon the verdict returned by the jury finding the defendant not
guilty. Jurisdiction is entered such an order is provided for by
the law. The court, therefore, orders that the order granting a new trial be reversed and judgment be entered upon the verdict returned by the jury finding the defendant not guilty.

ORDER REVERSED AND JUDGMENT ENTERED
THE COURT.

WILLIAM J. CONNELLEY, J. CLERK
JAMES H. MULLIGAN, J. CLERK

38103

LAURA C. RUCKER,

Appellee,

v.

CITY OF CHICAGO, a Municipal
Corporation,

Appellant.

APPEAL FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 635¹

Opinion filed Nov. 20, 1935

MR. JUSTICE HABEL DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment for \$1500 entered upon a verdict of the jury against the defendant. The action is for damages resulting from personal injuries suffered by the plaintiff while walking upon the sidewalk at 500 North State Street, in the City of Chicago, about 6:30 p. m. on January 28, 1935.

The negligence charged is, in part, that by reason of the defective condition of the sidewalk the plaintiff fell and was injured.

The facts appearing from the record disclose that the plaintiff was walking north from the loop district of Chicago, on the west side of State Street, accompanied by Fred Otte; that plaintiff in walking across Illinois Street at the intersection of State Street, stepped upon the north curb, took three steps and fell upon the sidewalk. At the time of the accident it was a cold night and very dark. There was no street light at the northwest corner of State Street and Illinois Street, near the point where the plaintiff fell. The street light nearest the place of the accident was diagonally across State Street. The sidewalk at the place where the plaintiff was injured was made of cement. There was a broken slab in the walk, which was depressed at the part where it adjoined the cement slab to the north. This slab had a crack in it, and was depressed about three inches below the cement

2010

LAURA C. WOOD

appellee,

v.

CITY OF CHICAGO, a defendant,
appellee.

Agreement.

Opinion filed Nov. 30, 1933

MR. JUSTICE BRIDGES delivered the opinion of the court.

This is an appeal from a judgment for \$1000 entered upon

a verdict of the jury against the defendant. The action is for

damages resulting from personal injuries suffered by the plaintiff

while walking upon the sidewalk at 300 North State Street, in the

City of Chicago, about 3:30 p. m. on January 18, 1933.

The negligence charged is, in part, that by reason of

the defective condition of the sidewalk the plaintiff fell and was

injured.

The facts appearing from the record disclose that the

plaintiff was walking north from the loop district of Chicago, on

the west side of State Street, accompanied by her sister; that

plaintiff in walking across Illinois Street at the intersection of

State Street, stepped upon the north curb, took three steps and

fell upon the sidewalk. At the time of the accident it was a cold

night and very dark. There was no street light at the northwest

corner at State Street and Illinois Street, and the police were

not present. The street light nearest the place of the

accident was abnormally across State Street. The sidewalk at the

place where the plaintiff was injured was made of cement. There

was a broken slab in the walk, which was depressed at the point

where it adjoined the cement slab to the north. This slab had a

width of 12 inches, and was depressed about three inches below the cement

slab adjoining it. The defective condition of the sidewalk was most pronounced to the west or inner part of the walk, and a patch had been cemented over a portion of the depressed area of the slab.

The plaintiff had a right to the use of the walk, and, from the evidence, did not have knowledge of the condition which caused the accident.

The defendant in the instant case offered no evidence, and the only evidence before the jury was that of the plaintiff. The question of negligence of the defendant, as well as contributory negligence, if any, of the plaintiff, was for the jury. The plaintiff was injured at the place indicated, and no point is raised by the defendant as to the extent of the injury sustained by the plaintiff, nor as to whether or not the judgment is excessive.

The court quite agrees with the defendant's contention that the City is not required under the law to keep the streets absolutely safe, but is bound only to use ordinary care to keep its streets and sidewalks reasonably safe for immediate travel thereon by persons using due care. The question is: was the alleged condition of the sidewalk complained of such as to make the City liable for the injuries sustained under the facts as they appear in evidence? The plaintiff was not obliged to anticipate the condition of the sidewalk to be such that she assumed any risk in walking upon it. At the time of the accident, it was dark and no street lamp was burning at the point of or near to the place of the accident. There is no evidence that on the night in question the plaintiff was able to see the condition of the walk by looking ahead. If such was her burden, no matter how careful she may have been, under the facts in this case she could not recover in an action against the City for the injuries sustained.

There is evidence that on occasions plaintiff walked from the loop to her home for exercise, and it was for the jury, from

also adjoining it. The Detective condition of the sidewalk was most pronounced to the west on a west part of the sidewalk, and a hole had been excavated under a portion of the sidewalk, west of the hole. The Plaintiff had a sign to the east of the hole, and from the evidence, did not have knowledge of the condition which caused the accident.

The defendant in the instant case offered no evidence, and the only evidence before the jury was that of the Plaintiff. The question of negligence of the defendant, as well as contributory negligence, is left to the Plaintiff, and the jury. The Plaintiff was injured at the place indicated, and no other is shown by the defendant as to the extent of the injury sustained by the Plaintiff, nor as to whether or not the defendant is negligent.

The court gave advice with the defendant's contention that the City is not required under the law to keep the streets absolutely safe, but is bound only to use ordinary care to keep the streets and sidewalks reasonably safe for immediate travel thereon by persons using the same. The question is: was the alleged condition of the sidewalk complained of such as to make the City liable for the injuries sustained under the facts as they appear in evidence? The Plaintiff was not obliged to anticipate the condition of the sidewalk to be such that she assumed any risk in walking upon it. At the time of the accident, it was dark and no street lamp was burning at the point of or near to the place of the accident. There is no evidence that on the night in question the Plaintiff was able to see the condition of the walk by looking ahead. It was not her burden, no matter how careful she may have been, under the facts in this case she could not recover in an action against the City for the injuries sustained.

There is evidence that on occasion Plaintiff walked from the law to her home for exercise, and it was for the jury, from

all the evidence, to find whether the plaintiff had knowledge of the walk at the time of the accident and was guilty of contributory negligence. Evidently the jury believed the evidence was such as to justify their verdict for the plaintiff.

The City relies in a large measure upon the City of Chicago v. Horton, 116 Ill. App. 570 for the rule there announced that an uneven condition of a sidewalk by depression or elevation of more than two to three inches at the point where the flagstones join, is not of itself a dangerous condition, for which a municipality is liable. This may be true and undoubtedly was the proper rule to apply to the facts in that case, but in the instant case the condition of the sidewalk could not be seen because of darkness, which was altogether different from one where the condition could be seen in the daytime, and where it would be the duty of the person using the walk to observe the condition and avoid stepping on the defective part so as to be tripped. City of Quincy v. Barker, 81 Ill. 300.

The defendant complains that the court erred in refusing to give two instructions offered by the defendant. The instructions are abstract propositions of law, and do not apply in the instant case. Instructions that are not in form to apply to the facts in evidence, are misleading.

The defendant further complains that the evidence does not show that defendant had actual or constructive notice of the defective condition of the sidewalk. In defendant's points and authorities this point is raised, but not mentioned in its argument or reply brief. However, there is evidence in the record that the defective condition of the walk existed for a considerable time before the accident, which evidence was not questioned by any evidence offered by the defendant. The judgment is affirmed.

JUDGMENT AFFIRMED.

HALL, P.J. AND DENIS E. SULLIVAN, J. CONCUR.

all the evidence, to find against the defendant and his co-defendant
the fact at the time of the accident and the guilt of contributory
negligence. Evidently the jury believed the evidence was such as
to justify their verdict for the plaintiff.

The city police is a large bureau upon the city of Chicago.

v. Hoffman, 118 Ill. App. 170 for the rule there announced that in
every condition of a sidewalk by construction or alteration of more
than two to three inches at any point above the level of the
is not of itself a dangerous condition, but which a municipality
is liable. This may be true and undoubtedly was the proper rule
to apply to the facts in that case, but in the instant case the
condition of the sidewalk could not be seen because of darkness,
which was altogether different from one where the condition could
be seen in the daytime, and where it would be the duty of the
person using the sidewalk to observe the condition and avoid stumbling on
the defective part so as to be injured. City of Chicago v. Hoffman.

118 Ill. App.

The defendant complains that the court erred in refusing
to give two instructions offered by the defendant. The instructions
are abstract propositions of law, and do not apply in the instant
case. Instructions that are not in form to apply to the facts
in evidence, are misleading.

The defendant further complains that the evidence does
not show that defendant had actual or constructive notice of the
defective condition of the sidewalk. In defendant's opinion and
understanding this point is raised, but not sustained in the evidence
as a matter of fact. However, there is evidence in the record that the
defective condition of the sidewalk was a considerable time
before the accident, which evidence was not questioned by any evi-
dence offered by the defendant. The judgment is affirmed.

THE COURT AFFIRMS.

38136

BARBARA PATCHEN

Plaintiff - Appellant,

v.

GORDON F. PATCHEN,

Defendant - Appellee.

ALFRED FROM

SUPERIOR COURT

COOK COUNTY.

282 I.A. 635²

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This is an appeal from an order denying plaintiff's application for temporary alimony and solicitor's fees as prayed for by the plaintiff in her amended petition, and the answer of the defendant to this petition. Plaintiff filed a bill for divorce upon the ground of cruelty, and prayed for alimony. The defendant filed his answer and also a cross-bill, charging cruelty and desertion. To this cross-bill the plaintiff answered denying the charges. The case was pending, and at the trial, the court, on July 1, 1932, entered a decree of divorce upon the cross-bill of the defendant, as prayed for.

From the record it appears that an order was entered by the Executive Committee of the Superior Court of Cook County, as provided for by the rules of this court, assigning Judge Rudolph Desort to the Criminal Court of Cook County for the year commencing Monday, September 7, 1931, and while so assigned and acting as the Judge of the Criminal Court of Cook County, he heard and signed a decree of divorce in the above entitled cause at the time above stated.

The plaintiff contends that the purported decree entered as of July 1, 1932, was entered while Judge Desort was acting as a judge of the Criminal Court of Cook County, and is, therefore, null and void. In support of this contention plaintiff cites The People v. Feinberg, 348 Ill. 549, and the case of U. S. Life

FILED

CLERK OF COURT

Plaintiff - Defendant

v.

GEORGE F. WILSON,

Defendant - Plaintiff

Opinion filed Nov. 30, 1935

MR. JUSTICE BRANDEIS delivered the opinion of the court.

This is an appeal from an order denying Plaintiff's

application for summary judgment and defendant's leave to pay

for by the plaintiff in her amended petition, and the answer of

the defendant to this petition. Plaintiff filed a bill for divorce

upon the ground of cruelty, and prayed for alimony. The defendant

filed his answer and also a cross-bill, charging cruelty and

desertion. To this cross-bill the plaintiff answered denying the

charges. The case was pending, and at the trial, the court, on

July 1, 1935, entered a decree of divorce upon the cross-bill of

the defendant, as prayed for.

From the record it appears that an order was entered by

the Executive Committee of the Superior Court of Cook County, as

provided for by the rules of this court, assigning Judge Watkins

to the trial of the bill for divorce for the year commencing

Monday, September 7, 1935, and while so assigned and sitting as

the judge of the trial court of Cook County, he heard and allowed

a decree of divorce in the above entitled cause of the kind above

stated.

The plaintiff contends that the purported decree entered

on July 1, 1935, was reversed while Judge Watkins was sitting as

a judge of the trial court of Cook County, and he, therefore,

will not fail. In support of this contention plaintiff relies

on the fact that the decree was entered on July 1, 1935, and was not

Ins. Co. v. Shattuck, 159 Ill. 610. In the latter case the presiding judge at the time of the trial of the civil case, upon a hearing, entered judgment, and allowed the defendant 60 days within which to present and file its bill of exceptions. During and before the expiration of the time allowed for the approving and filing of the bill of exceptions, the trial judge was assigned to and presided in the Criminal Court of Cook County, and while so acting as a judge of the Criminal Court, he prepared an order extending the time within which to file the bill of exceptions in the civil case then pending. The Supreme Court said:

"It is to be noted that the Criminal Court of Cook County is a continuation of the recorder's court of the city of Chicago. The recorder's court was a court of both criminal and civil jurisdiction, (Laws of 1853, p. 147; Scates, Treat & Blackwell's Stat. p. 661;) and when, by the constitution of 1870, it was superseded by the Criminal Court, it was expressly provided that the latter court 'shall have no jurisdiction in civil cases, except in those on behalf of the People, and incident to " " criminal or quasi criminal matters, and to dispose of unfinished business.' This last clause, 'and to dispose of unfinished business,' very plainly has reference only to unfinished civil business pending in the recorder's court at the time of the change in jurisdiction worked by the new constitution, and not to unfinished business that might be at any time pending in the Circuit or Superior Court of Cook County, and that had already been in part disposed of in one or the other of said last mentioned courts by or before the particular judge who was thereafter holding and presiding in the Criminal Court, as seems to be supposed."

The Criminal Court and the Superior Court are wholly separate and distinct courts, each having its own separate and distinct organization, clerk, record and place where it is held. The jurisdictions of the two courts are entirely different, the Criminal Court having 'no jurisdiction in civil cases,' except the very limited jurisdiction above indicated, and the Superior Court having general jurisdiction in all civil cases. When a judge of the Superior Court presides in and holds a term of the Criminal Court, he does so, not in his official capacity of a judge of the Superior Court, but in his capacity of ex officio judge of the Criminal Court, the latter part of the section of the constitution above quoted providing that when he is holding a term of the Criminal Court he 'shall be ex officio judge of said court'. While holding the Criminal Court he is that court in concrete form, in the exercise of judicial functions is the agent of that court only, and speaks and acts solely for it, and not

for some other court that he is not holding. Bowman v. Venice and Carondelet Railway Co. 102 Ill. 459."

This case was cited with approval in People ex rel. v. Feinberg, 348 Ill. 549, in which the court held that where a judge of the Circuit Court not assigned to the Criminal Court attempts to call a special grand jury and assumes jurisdiction of the proceeding, such orders in connection therewith are void, and may be wholly disregarded. The court in passing upon the question said:

"A petition addressed to the judges of the Circuit Court of Cook County asking for the impaneling of a special grand jury and the appointment of a special State's attorney for Cook County was presented to the Hon. Michael Feinberg in the court room in the court house of Cook County, Illinois, regularly occupied by him as a chancellor of the Circuit Court. Judge Feinberg thereupon undertook to convene a branch of the criminal court of Cook County, with himself as presiding judge, M. P. Delano, chief deputy clerk of the criminal court, being then in attendance and acting as such clerk, and the sheriff of Cook county being in attendance. He also directed the clerk of the criminal court of Cook county to file the petition, and entered an order directing that a special venire issue for an additional grand jury for the April, 1932, term of the criminal court, that the clerk of the criminal court proceed to draw from the jury box the names of one hundred persons and certify them to the sheriff, and that the sheriff summon such persons to appear in the court room of Judge Feinberg on April 8, 1932. In obedience to such order the clerk filed the petition, spread the order upon the records of the court, drew and certified the names of one hundred persons to the sheriff of said county, and the sheriff thereupon summoned those persons and they appeared in the court room of Judge Feinberg in the court house in said county. Judge Feinberg thereupon caused twenty-three of such persons to be impaneled as a special grand jury, to serve as an additional grand jury for the criminal court for the April, 1932, term, and appointed Louis E. Hart a special State's attorney to assist the grand jury in its investigation and to prosecute all indictments returned by it. Hart accepted the appointment as such special State's attorney, qualified as such, and has been since the date of his appointment acting as such. The special grand jury immediately went into session in a room set aside for it in the court house and has been since the date of its impaneling assuming to act as a grand jury of the criminal court, has used the process of that court in commanding witnesses to appear before it, and has by its foreman administered an oath to such witnesses and has examined such witnesses touching their knowledge of crimes alleged to have been committed in Cook county. * * *

for some other court that he is not holding. James
v. Venier and O'Connell holding 19. 102 Ill. 187.

This case was cited with approval in People ex Rel. v.

Feinberg, 248 Ill. 249, in which the court held that where a judge
of the Circuit Court not assigned to the Criminal Court attempts to
call a special grand jury and assumes jurisdiction of the proceed-
ing, such action in connection herewith is void, and may be
wholly disregarded. The court in passing upon the question said:

It is well known to the law of this State
Court of Cook County acting for the appointment of a
special grand jury and the appointment of a special
attorney for Cook County was presented to the
Hon. Michael Feinberg in the court room in the
house of Cook County, Illinois, regularly presided by
him as a member of the Criminal Court. Judge Feinberg
therein and thereon is shown a number of the original
records of Cook County, with himself as presiding judge,
M. T. DeLoe, Clerk of the Criminal Court, and
being then in attendance and acting as such clerk, and
the record of Cook County being in attendance. He also
displayed the clerk of the Criminal Court of Cook County
to the petition, and entered an order directing him
a special venire issue for an additional grand jury for
the April, 1932, term of the Criminal Court, that the clerk
of the Criminal Court proceed to draw from the list the
names of one hundred persons and certify them to the
sheriff, and that the sheriff summon such persons to appear
in the Court room of Cook County on April 2, 1932.
Obedience to such order the clerk filed the petition,
against the order upon the records of the court, drew and
certified the names of one hundred persons to the sheriff
of said county, and the sheriff thereupon summoned those
persons and they appeared in the Court room of Cook
County in the court house in said county. Judge Feinberg
thereupon caused twenty-three of such persons to be
impaneled as a special grand jury, to serve as an additional
grand jury for the Criminal Court for the April, 1932, term,
and appointed Louis M. Hunt a special State's attorney to
assist the grand jury in its proceedings and he presented
all witnesses examined by it. Hunt accepted the appoint-
ment as such special State's attorney, qualified as such,
and has been since the date of his appointment acting as
such. The special grand jury immediately went into session
in a room set aside for it in the court house and has been
in the act of the examining according to what is a grand
jury of the Criminal Court, has used the process of that
court in examining witnesses to answer before it, and has
by the foreman returned an order to such witnesses and
has examined such witnesses touching their knowledge of
certain alleged facts upon which in Cook County, Ill.

The respondent contends that the circuit court of Cook County is vested with jurisdiction in all cases of a criminal nature, and that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, chap. 78, sec. 19), to cause a special venire to be issued at any time when he shall be of the opinion that public justice requires it. In *Berkowitz v. Lester*, 121 Ill. 99, an action was brought in the Circuit Court of Cook County to recover a statutory penalty imposed by section 132 of the Criminal Code. The action being quasi-criminal, the court dismissed it on motion of the defendant on the ground that the Circuit Court was without jurisdiction of the subject matter."

* * *

"Since no other method has been provided by law, the rule, which expresses the determination of the judges, fixes the method of appointment. 'Said judges shall be ex-officio judges of said court.' 'Said' judges refers to the one or more of the judges of the Circuit or Superior Court by whom the terms of the Criminal Court are to be held, determined by the judges of the Circuit or Superior Court. 'Said' judges who are designated to hold the terms of the Criminal Court, and not the whole body of judges who designate from their own number the one or more judges to hold the terms of the Criminal Court, are the ex-officio judges of the criminal court. * * *

There are no elected judges of the Criminal Court of Cook County. They are all selected from the judges of the Circuit or Superior Court by their associates, and become, by virtue of their selection and by virtue of their offices, ex-officio judges of the Criminal court. A judge of the Circuit Court is not a judge of the criminal court., ex-officio or otherwise, until he has been assigned to that service by the judges of the circuit court in accordance with the rules of the court regulating such assignment. No judge of the Circuit Court, unless so assigned, has the right to hold a term of the criminal court.

It may be noted that the Supreme Court in discussing Greene v. People, 182 Ill. 278, in the *Feinberg* case, overruled its opinion in that case, in so far as it is inconsistent with the Court's opinion in the *Feinberg* case. This is one of the cases relied on by the defendant in the instant case.

From these authorities, in applying the rule announced by the Supreme Court, the conclusion necessarily follows that Judge Desort, who was assigned to and presiding in the Criminal Court of Cook County, had no jurisdiction to enter the decree of divorce in

The respondent contends that the circuit court of Cook County is vested with jurisdiction in all cases of a criminal nature, and that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve. In support of this contention, the respondent cites Ill. St. Ann. 1874, ch. 78, sec. 12, in which it is provided that in the circuit court of Cook County, in cases of a criminal nature, any judge of that court may remove a juror at any time when he shall be of the opinion that he is incompetent to serve. The respondent further contends that the circuit court is the only court in Cook County in which a criminal case can be tried, and that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve.

It is true that no other method has been provided by law, the only other method being the removal of a juror by the court. It is also true that the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) is a general act, and that it applies to all courts in which a criminal case can be tried. However, it is not true that the circuit court is the only court in which a criminal case can be tried. It is true that the circuit court is the only court in which a criminal case can be tried, but it is not true that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve. It is true that the circuit court is the only court in which a criminal case can be tried, but it is not true that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve.

There are no other judges of the circuit court of Cook County. They are all selected from the judges of the circuit of Superior Court by their association, and the circuit of Superior Court is the only court in which a criminal case can be tried. It is true that the circuit court is the only court in which a criminal case can be tried, but it is not true that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve. It is true that the circuit court is the only court in which a criminal case can be tried, but it is not true that any judge of that court is authorized by the act concerning jurors (Rev. Stat. 1874, ch. 78, sec. 12) to remove a juror at any time when he shall be of the opinion that he is incompetent to serve.

It may be noted that the Supreme Court in discussing the case of Greene v. People, 187 Ill. 375, overruled the opinion in that case, in so far as it is inconsistent with the Court's opinion in the Peabody case. This is one of the cases relied on by the defendant in the instant case.

From these authorities, in applying the rule announced by the Supreme Court, the conclusion necessarily follows that Judge Peabody, who was assigned to and presiding in the circuit court of Cook County, had no jurisdiction to enter the decree of divorce in

the case pending in the Superior Court of Cook County.

The defendant calls to our attention facts which do not appear in the abstract of the record. Facts in order to be properly presented, must be presented as a part of the record filed in the case, and not by suggestions in the briefs. The method adopted by the defendant is not helpful to this court.

The plaintiff in her conclusion suggests that we reverse the order finding that the decree as entered in the Criminal Court was an invalid decree, and that the same be reversed and remanded with directions to the court to expunge the void decree from the record. This we cannot do because the judge presiding did not have jurisdiction to enter the decree of divorce while presiding in the Criminal Court, and the decree being void may be wholly disregarded. The People v. Feinberg, supra.

This court is without jurisdiction and cannot enter an order requiring that the decree complained of be expunged. Therefore the appeal is dismissed.

APPEAL DISMISSED.

HALL, P. J. AND DENIS E. SULLIVAN, J. CONCUR.

the case pending in the Superior Court of Cook County.

The defendant calls to our attention that while he has

appeared in the abstract of the records, there is nothing to be

only presented, must be presented as a part of the record filed in

the case, and not by suggestion in the trials. The record showing

by the defendant is not helpful to this court.

The plaintiff in her examination suggests that we reverse

the order finding that the divorce was entered in the Criminal

Court was an invalid divorce, and that the same be reversed and

remanded with directions to the court to expunge the said divorce

from the record. This we cannot do because the judge entering the

not have jurisdiction to enter the divorce of divorce while pre-

siding in the Criminal Court, and the divorce being void may be

validly annulled. Ex parte v. Ex parte.

This court is without jurisdiction and cannot enter an

order requiring that the divorce be annulled or be expunged.

Therefore the appeal is dismissed.

APPEAL DISMISSED.

HALL, P. J. and JOHN E. SULLIVAN, J. CONCUR.

38137

HAROLD A. FREEVOL and SAM SMEDBERG,
doing business as Freevol & Smedberg,

Defendants in Error,

v.

MINNIE R. GARNER,

Plaintiff in Error.

ERROR TO

CIRCUIT COURT

COOK COUNTY.

282 I.A. 635

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This case comes here upon a writ of error brought by the defendant to have reviewed a judgment of the Circuit Court of Cook County against her for \$7,183.62. The action is one in assumpsit filed by the plaintiff and consisting of the common counts, with a copy of the account sued on and plaintiff's affidavit of amount due. To this action the defendant filed a plea of non-assumpsit and affidavit of merits. The case, being at issue, was submitted to the court, a jury having been waived. Evidence was heard before the court, and at the conclusion of the hearing, judgment was entered.

The fact upon which this judgment is founded is that money was loaned by the plaintiffs, which was evidenced by a check, dated May 4, 1929, payable to John P. Garner, for \$8,372.50. The question as to what use was made of the money is disputed. Plaintiffs' evidence tends to show that the money was loaned to meet certain payments of principal and interest due on the first mortgage on property known as the Maccabee Temple, located at 5701 to 5711 West Chicago Avenue, the title to which was in Minnie R. Garner, the defendant and wife of John P. Garner.

This check issued by the plaintiffs was endorsed and deposited to the credit of the defendant's account in the Laramie State Bank, on May 6, 1929, and immediately thereafter checks were issued payable out of the Minnie R. Garner Building Account, and signed by this defendant. A check for \$8,450 was used to pay the \$5,000 pre-payment,

AMONG A. KENNEDY and SAM HENNING, doing business as KENNEDY & HENNING,

Defendants in Error,

v.

WILLIAM A. KENNEDY,

Plaintiff in Error.

882 I.A. 685

Opinion filed Nov. 30, 1935

MR. JUSTICE HENRY DELIVERED THE OPINION OF THE COURT.

This case comes here upon a writ of error brought by the defendant to have reviewed a judgment of the Circuit Court of Cook County against her for \$7,183.92. The action is one in assumpsit filed by the plaintiff and consisting of the common counts, with a copy of the account sued on and plaintiff's affidavit of account included. To this action the defendant filed a plea of non-assumpsit and affidavit of merits. The case, being at issue, was submitted to the court, a jury having been waived. Evidence was heard before the court, and at the conclusion of the hearing, judgment was entered. The fact upon which this judgment is founded is that money was loaned by the plaintiff, which was evidenced by a check, dated May 4, 1933, payable to John T. Garner, for \$5,375.00. The question as to what use was made of the money is disputed. Plaintiff's evidence tends to show that the money was loaned to meet certain expenses of principal and interest due on the first mortgage on property known as the Macomber Temple, located at 2701 to 2711 West Chicago Avenue, the title to which was in William A. Garner, the defendant and wife of John T. Garner.

This check issued by the plaintiff was endorsed and deposited to the credit of the defendant's account in the Mercantile State Bank, on May 5, 1933, and immediately thereafter checks were issued payable out of the William A. Garner Building account, and signed by this defendant. A check for \$3,400 was used to pay the \$2,000 pre-payment.

and the \$3,450 interest which had accrued and was chargeable to defendant's building.

From defendant's evidence it appears that John P. Garner acted for the defendant in all her business transactions and looked after her affairs, and that the defendant depended upon her husband as her agent "to handle everything" for her.

John P. Garner testified that he acted as her agent. This witness, however, testified further that the money in question was loaned to him by one of the plaintiffs, Harold A. Freevol, to meet personal obligations, and also to be used in payment of the amount due on defendant's property. For this sum, the plaintiffs received John P. Garner's promissory notes and several renewal notes, and upon the principal amount \$1500 was paid, and interest up to January, 1932.

There is evidence that the plaintiffs at the time the loan was made asked for defendant's note when the check was delivered in her presence to her husband in their home, and that because John P. Garner did not have a blank note for such use, the plaintiffs suggested that such note be prepared. Afterwards, John P. Garner refused to permit his wife to sign a note for the amount received, and tendered his personal note instead to the plaintiffs, which they contend was accepted as collateral and not in payment of the amount due from the defendant.

The important question is, whether the debt was a liability of the defendant, or that of her husband, and this must be determined from the evidence. It is not disputed, but is in fact admitted by the defendant that John P. Garner acted for her in her business affairs. There seems to be no doubt that there was a pressing need for money, and that the money received from the plaintiffs was deposited in defendant's account in the bank and used to make payments due on

of the \$5,000 interest which was received and was accounted for

defendant's building.

From defendant's evidence it appears that John F. Garner
acted for the defendant in all her business transactions and looked
after her affairs, and that the defendant signified upon her husband
her agent "to handle everything" for her.

John F. Garner testified that he acted as her agent. This
testimony, however, testified further that the money in question was
sent to him by one of the plaintiffs, Harold A. Tetter, to meet
certain obligations, and also to be used in payment of the account
on defendant's property. For this use, the plaintiffs received

in 1919, Garner's promissory notes and several renewal notes, and

on the principal amount \$5000 was paid, and interest up to

January, 1921.

There is evidence that the plaintiffs at the time the loan
was made asked for defendant's note when the check was delivered. It
is presumed to her husband in their home, and that because John F.

Garner did not have a blank note for such use, the plaintiffs

suggested that each note be prepared. Afterwards, John F. Garner

asked to permit his wife to sign a note for the amount received,

and tendered his personal note instead to the plaintiffs, which they

accepted as collateral and not in payment of the amount

due from the defendant.

The important question is, whether the debt was a liability

of the defendant, or that of her husband, and this must be determined

from the evidence. It is not disputed, but is in fact admitted by

the defendant that John F. Garner acted for her in her business affairs.

It seems to be no doubt that there was a pressing need for money,

and that the money received from the plaintiffs was expended in

defendant's account in the bank and used to make payments due on

the property of the defendant.

The circumstances surrounding the transaction are to be considered in determining the question whether or not the defendant was benefited by the receipt of this money, which she used by the issuance of checks to make payments due on account of the real estate owned by her. The strong circumstance in this case is that the defendant derived the benefit of the transaction carried on by her husband, John F. Garner, and that the defendant used such money beneficially to herself.

The defendant from the facts and circumstances in evidence, is properly chargeable with knowledge of the deposit in her account of plaintiffs' checks, endorsed by her husband, and the signing by her of checks to be used to make payments due on her property, and defendant is estopped from asserting that her husband was not authorized to make the loan, for the reason that the defendant was benefited by the use of the proceeds of this loan in making payments due on her property.

Upon the question of agency, this court in the case of Traders Safety Building Corp. v. Shirk, 237 Ill. App. 1, stated the general rule to be as follows:

"The bank, it is conceded, was authorized to collect the rent. It was not, therefore, wholly without power to represent the beneficiaries, and, at the most, it can only be said that it exceeded the power granted to it in accepting rent from the complainant corporation. If so, slight acts on defendants' part would amount to a ratification of the action of their agent, which would be readily implied. Harrod v. McDaniels, 126 Mass. 413. Defendants could not retain the rents collected without ratifying the action of their agent in accepting the rents. There is a wealth of authority to this effect. Henderson v. Cummings, 44 Ill. 325; Swisher v. Palmer, 106 Ill. App. 432; Union Mut. Life Ins. Co. v. Kirchoff, 133 Ill. 368; Bentzel v. City & Suburban Ry. Co., 90 Md. 444."

An interesting case in which the facts, upon the question of whether a wife is bound by her husband's acts by estoppel, are similar to those in the case before us, is that of Anderson v. Armstead, 69 Ill. 452, in which the court said:

the property of the defendant.

The circumstances surrounding the transaction are as follows:

considered in determining the question whether or not the defendant

was benefited by the receipt of said money, which was used by the

defendant to make payments due on account of the real estate

owned by her. The strong circumstance in this case is that the

defendant derived the benefit of the transaction carried on by her

husband, John F. Gerner, and that the defendant used said money

exclusively to herself.

The defendant from the facts and circumstances in evidence,

a properly chargeable with knowledge of the receipt in her husband's

of said money, which was used by her husband, and the signing by

her of checks to make payments due on her property, and

defendant is estopped from asserting that her husband was not authorized

to make the loan, for the reason that the defendant was benefited

by the use of the proceeds of this loan in making payments due on

her property.

Upon the question of agency, this court in the case of

Wheeler v. Wheeler, 137 Ill. App. 2, stated the

general rule to be as follows:

"The bank, this concluded, was authorized to collect the rent. It was not, therefore, wholly without power to represent the defendant, and, if the money is not only to be used for the collection of the rent, but is in receipt of rent from the defendant's corporation. If so, slight acts on defendant's part would amount to a ratification of the action of their agent, which would be readily implied. Wheeler v. Wheeler, 137 Ill. App. 2, 202.

Defendant could not turn the rent over to her without ratifying the action of their agent in collecting the rent. There is a wealth of authority to this effect. Wheeler v. Wheeler, 137 Ill. App. 2, 202; Wheeler v. Wheeler, 137 Ill. App. 2, 202; Wheeler v. Wheeler, 137 Ill. App. 2, 202.

An interesting case in which the facts, upon the question

whether a wife is bound by her husband's acts by estoppel, are

similar to those in the case before us, is that of Wheeler v. Wheeler.

In this case the court said:

"The question is not what power did her husband actually have over the property, but what power did she, by her acts and omissions, permit him to represent himself to the appellant to have. * * * It is an evident proposition that a husband can not, with the connivance of the wife, commit a fraud upon another for the purpose of presenting her with the proceeds of the fraud, for their future mutual use and enjoyment.

We hold that, under the evidence, the wife is estopped from denying that her husband was acting as her agent in making the contract. * * *

In this case the defendant received the benefit of plaintiff's loan, which was obtained by her husband, John F. Garner, and used this fund for purposes of her own. In the somewhat analogous case of Alton Manf. Co. v. The Garrett Biblical Institute, 243 Ill. 298, the court said:

"We are also of the opinion there was sufficient evidence to entitle plaintiff to have the case go to the jury upon the question whether, in the absence of any authority in Dr. Shepherd to borrow the money and give the notes sued on, he did borrow it and appellee received the use and benefit of it. The evidence warranted the conclusion that the money received for the notes sued on was deposited in the bank to the credit of appellee. This, in connection with the other proof as to the manner in which the money was drawn out, tends to show that appellee received the benefit of it. It is, of course, not conclusive of that fact, but, standing alone, tends to support it. This court has held that where a principal actually receives the benefit of money procured by the unauthorized acts of its agent, the principal will be liable in the amount it has received the benefit of."

And in passing upon the question of liability, the court further said:

"The evidence, we think was sufficient to justify submitting to the jury the liability of appellee on three grounds: First, whether the money was borrowed by authority, express or implied, of the corporation; second, if not borrowed in pursuance of authority previously given, did the corporation, after knowledge of the fact of its being borrowed, approve or ratify it? Third, if it was borrowed without previous authority, and was not afterwards, with knowledge, ratified by the corporation, did it receive the use and benefit of the money?"

See also First National Bank of Las Vegas v. Oberne et al. 121 Ill. 25;

Fay v. Slaughter, 194 Ill. 157.

"The question is not what power did her husband actually have over her property, but what power did she, by her acts and omissions, enable him to exercise. * * * It is an evident principle in the relation of husband and wife, that a husband can not, with the connivance of his wife, commit a crime upon another for the purpose of obtaining her with the proceeds of the crime, for that would be to use the wife as an instrument."

38. the Court said:

see of Aiken v. The Western National Insurance Co. Ltd., 111 T.L.R. 100 (1905). In the somewhat analogous case of Aiken v. The Western National Insurance Co. Ltd., 111 T.L.R. 100 (1905), which was obtained by her husband, John A. Aiken, and in this case the defendant received the benefit of Aiken-

[illegible]

And in answer upon the question of liability, the court

[illegible]

we also find that the β parameter is significantly positive, indicating that the market is not efficient.

THE UNIVERSITY OF CHICAGO

It is contended by the defendant that the plaintiffs by the acceptance of the notes signed by John P. Garner are estopped from claiming that Minnie R. Garner, the defendant, is legally liable to them for the money loaned. In determining this question we are controlled by the evidence in the record. As we have already indicated in this opinion, the money received from the plaintiffs was deposited to the account of the defendant, and she used this money in paying a loan due on property, the title to which was in her name. The rule where a note is issued as it was in this case is stated in Wilhelm v. Schmidt, et al. 84 Ill. 183 in these words:

"We recognize the rule to be, that the mere acceptance, by the creditor, of a negotiable note of a third person, makes it but collateral security; that when such note is given for a pre-existing debt, the presumption is, that it was not the intention of the parties that it should operate as an immediate and absolute satisfaction and discharge of the debt, and that nothing short of an actual agreement, or some evidence from which a positive inference of discharge can be made, will suffice to produce such effect; and that it is the general principle that the acceptance of collateral security has no effect whatever on the legal rights and liabilities of the parties, as respects the original debt, either to impair or suspend the right of action."

The loan had been made, and from the evidence it would appear that the plaintiffs requested that the defendant sign a note. The note so requested was not delivered, but the plaintiffs received a note signed by John P. Garner, the defendant's husband. It does not appear from the evidence that it was the intention of the parties that the note received should operate as an immediate and absolute satisfaction and discharge of the debt, but that the acceptance of the note made it collateral security only, and did not impair or suspend the right of action of the plaintiffs against the defendant. See also the case of Walsh v. Lennon, 98 Ill. 27; Short v. Weisenborn, 193 Ill. App. 183.

It is contended by the defendant that the plaintiff by the acceptance of the note signed by John F. Garner, the defendant, is legally liable to them for the money loaned. In determining this question we are controlled by the evidence in the record. As we have already indicated in this opinion, the money received from the plaintiff was deposited to the account of the defendant, and she used this money in paying a loan due on property, the title to which was in her name. The rule where a note is issued as it was in this case is stated in Wright v. Wright, 101 Ill. 181, 182, 183.

The defendant also contends that the note was not given by the plaintiff, but that it was given by John F. Garner, the defendant, and that the plaintiff is not liable thereon. This contention is based upon the fact that the plaintiff is not a party to the note, and that the note was not given by her. It is contended that the plaintiff is not liable on the note because she is not a party to it, and that the note was not given by her. It is also contended that the plaintiff is not liable on the note because she is not a party to it, and that the note was not given by her. It is also contended that the plaintiff is not liable on the note because she is not a party to it, and that the note was not given by her.

The loan was made, and from the evidence it would appear that the plaintiff received the note signed by John F. Garner, the defendant's husband. It does not appear from the evidence that it was the intention of the parties that the note received should create an immediate and absolute obligation and discharge of the debt, but that the acceptance of the note made it collateral security only, and did not transfer or suspend the right of action of the plaintiff against the defendant. We also cite the case of Wright v. Wright, 101 Ill. 181, 182, 183.

Other objections are made by the defendant to the admissibility of evidence, and it is contended by the defendant that the court erred in refusing certain propositions of law submitted to the court. We have examined the evidence the admissibility of which was objected to, and feel that the objections are without merit.

It must be remembered that this cause was submitted to the court, and the presumption is that the trial court, in passing upon the evidence and entering the judgment, considered only the competent evidence in the record, and we believe the record fully sustains the court's judgment in this respect. Radtke v. The People, 171 Ill. App. 462; Niagara Ins. Co. v. Bishop, 49 Ill. App. 388.

As to the propositions of law submitted to the court, we are unable to find that the court erred as contended for by the defendant. They were largely upon the question of the authority of John P. Garner to act as agent for Minnie R. Garner, the defendant, and from the conclusions reached by us from the facts, these propositions of law were not proper and the court was fully justified in refusing to hold as suggested by the defendant.

We are of the opinion that there is no reversible error in the record, and accordingly the judgment is affirmed.

JUDGMENT AFFIRMED.

HALL, F.J. AND DENIS E. SULLIVAN, J. CONCUR.

Other objections are made by the defendant to the admissibility of evidence, and it is contended by the defendant that the court erred in refusing to admit the evidence of law submitted in the case. We have examined the evidence and the admissibility of which was objected to, and find that the objection was without merit. It must be remembered that this case was submitted to the court, and the presumption is that the trial court, in passing upon the evidence and entering the judgment, considered only the competent evidence in the record, and we believe the record fully sustains the court's judgment in this respect. Wright v. The People, 171 Ill. 400, 401; Wright v. The People, 171 Ill. 400, 401. As to the proposition of law submitted in the case, we are unable to find that the court erred in concluding that the defendant. They were largely upon the question of the admissibility of evidence. It is not an agent for Illinois R. Co., the defendant, and from the conclusions reached by us from the facts, these propositions of law were not proper and the court was fully justified in refusing to hold as suggested by the defendant. We are of the opinion that there is no reversible error in the record, and accordingly the judgment is affirmed.

REVEREND JUSTICE.

ALL, P. L. AND MARIE E. SULLIVAN, J. BROWN.

38173

LE ROY LEWIS,

Appellee,

v.

LIEBERSON NOVELTY CO., a
corporation,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 635⁴

Opinion filed Nov. 20, 1935

MR. JUSTICE NEBEL DELIVERED THE OPINION OF THE COURT.

Defendant appeals from a judgment entered in the Municipal Court of Chicago for the plaintiff in the sum of \$630. The cause was submitted to the court, without a jury. The plaintiff sued defendant for the value of merchandise and furniture delivered in the amount of \$540.51; also for the sum of \$250.78 for accounts receivable and cash sales made by the plaintiff for the defendant, and the further sum of \$760.01 for commissions earned and due the plaintiff while employed by the defendant, making a total sum of \$1,351.30, and claimed a balance due, after allowing defendant a credit of \$583.73, the sum of \$767.57. The court entered a judgment, after a hearing was had, for \$630, being \$147.57 less than the amount claimed by the plaintiff.

The amount claimed by the plaintiff is alleged to be due upon an agreement with the defendant. By the terms of this agreement the defendant purchased from the plaintiff the merchandise and fixtures used by the plaintiff in the manufacture of pocketbooks. The record discloses that the value of this property was \$540, and that certain bills receivable were delivered to the defendant, who was to collect them, and when paid, the amount was to be credited to the plaintiff's account. The defendant admits that he collected the bills receivable amounting to \$250.78, and that by agreement the plaintiff worked for the defendant on a commission basis, but the amount alleged to be due between the parties is in dispute.

IN RE: LUIS,

Appellee,

v.

ALLISON ROBERTSON CO., a

corporation,

Appellant.

321 A. 885

Opinion filed Nov. 23, 1933

MR. JUSTICE KENNEDY DELIVERED THE OPINION OF THE COURT.

Defendant appeals from a judgment entered in the Circuit

Court of Chicago for the plaintiff in the sum of \$600. The cause

was submitted to the court, without a jury. The plaintiff avers

defendant for the value of merchandise and furniture delivered in

the amount of \$140.21; also for the sum of \$200.78 for accounts

receivable and cash sales made by the plaintiff for the defendant,

and the further sum of \$750.01 for commissions earned and due the

plaintiff while employed by the defendant, making a total sum of

\$1,351.50, and claimed a balance due, after allowing defendant a

credit of \$633.75, the sum of \$717.75. The court entered a judgment,

after a hearing was had, for \$600, being \$117.75 less than the amount

claimed by the plaintiff.

The amount claimed by the plaintiff is alleged to be due upon

an agreement with the defendant. By the terms of this agreement the

defendant purchased from the plaintiff the merchandise and fixtures

used by the plaintiff in the manufacture of pocketbooks. The record

discloses that the value of this property was \$540, and that certain

bill receivables were delivered to the defendant, who was to collect

them, and when paid, the amount was to be credited to the plaintiff's

account. The defendant admits that he collected the bill receivables

amounting to \$633.75, and that by agreement the plaintiff worked for

the defendant on a commission basis, but the amount alleged to be due

between the parties is in dispute.

The court in order to determine the issues between the parties, was required to pass upon the credibility of the witnesses and the weight of the evidence, and from the facts in the record it does not appear that the judgment entered was against the manifest weight of the evidence.

In an action of the fourth class in the Municipal Court of Chicago written pleadings are not required, and the case is whatever the evidence introduced makes it. Saxton & Co. v. English Canning & Mfg. Co., 211 Ill. App. 504; Obermeyer v. Wisconsin Dairy Farms Co. 211 Ill. App. 213. The instant case comes within this classification.

The defendant contends that the attorney for the plaintiff was permitted to testify in the proceeding, and that because of such fact the judgment should be reversed. While it is not proper for a trial attorney representing either party in the case to testify, still such evidence, if allowed, goes only to the question of the credibility of the witness. However, in the instant case, the fact seems to be that the trial attorney during the progress of the trial, was called to another case, in the Circuit Court, and asked permission to be excused whereupon an associate concluded the hearing, and to this, no objection was made by the defendant. In this procedure we find no error which would justify a reversal of the judgment. The judgment is accordingly affirmed.

JUDGMENT AFFIRMED.

HALL, F.J. AND DENIS E. SULLIVAN, J. CONCUR.

The court in order to determine the issue between the parties, was required to pass upon the credibility of the witnesses and the weight of the evidence, and from the facts in the record it does not appear that the judgment entered was against the weight of the evidence.

In an action of the fourth class in the Municipal Court of Chicago where pleadings are not required, and the case is whatever the evidence introduced makes it. Winters v. Winters, 211 Ill. App. 2d 304; Winters v. Winters, 211 Ill. App. 2d 304. The instant case comes within this classification. The defendant contends that the attorney for the plaintiff

was permitted to testify in the proceedings, and that because of such fact the judgment should be reversed. While it is not proper for a trial attorney representing either party in the case to

testify, still such evidence, if allowed, goes only to the question of the credibility of the witness. However, in the instant case, the court seems to be that the trial attorney during the progress of the trial, was called to another case, in the District Court, and asked permission to be examined whether an associate counsel the hearing

and to this, no objection was made by the defendant. In this procedure we find no error which would justify a reversal of the judgment. The judgment is accordingly affirmed.

REVEREND JUSTICE

WILLIAM J. WELLS, J. CLERK.

38270

FELIX DE LA ROSA,

Appellant,

v.

SWIFT & COMPANY EMPLOYEES' BENEFIT
ASSOCIATION, JESUS DE LA ROSA,

Appellees.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

282 LA. 635

Opinion filed Nov. 20, 1935

MR. JUSTICE HEBEL DELIVERED THE OPINION OF THE COURT.

This appeal is brought by the plaintiff from a judgment entered in the Municipal Court of Chicago for \$278. in favor of Jesus De La Rosa, intervening petitioner here, in a suit to recover a death benefit provided for in a policy issued by Swift & Company Employees' Benefit Association to Candelario De La Rosa, deceased.

The stipulated facts are that prior to February 5, 1927, Candelario De La Rosa and Juana Hernandez agreed with each other that they would be husband and wife; that they held themselves out as such in the community in which they lived in Chicago; that no license was obtained to permit the marriage, as required by statute; that their relationship was what is known as a common law marriage; that thereafter, on February 5, 1927, a son, Jesus De La Rosa, was born to Juana Hernandez, which son is the intervening petitioner in this suit; that on December 12, 1929, a ceremony was had between Candelario De La Rosa and Juana Hernandez, at which a priest officiated; and it appears from the stipulated facts that neither Candelario De La Rosa nor Juana Hernandez, nor any other person on their behalf, secured a license in accordance with the provisions of Chapter 89, Sec. 6 of the Illinois State Bar Stats, permitting them to be joined in matrimony.

It then appears from the stipulation of facts, that on February 27, 1930, Juana Hernandez died, and that on July 16, 1933,

282 I.A. 635

Opinion filed Nov. 30, 1935

MR. JUSTICE HENRY DELIVERED THE OPINION OF THE COURT.

This appeal is brought by the plaintiff from a judgment

entered in the Municipal Court of Chicago for \$275. in favor of

Joanna De la Rosa, Intervening petitioner here, in a suit to recover

a death benefit provided for in a policy issued by Santa Fe Company

employees' benefit association to Gerardo De la Rosa, deceased.

The stipulated facts are that prior to February 5, 1935,

Gerardo De la Rosa and Joanna Hernandez agreed with each other

that they would be husband and wife; that they said themselves out

as such in the community in which they lived in Chicago; that no

license was obtained to permit the marriage, as required by statute;

that their relationship was such as to make the marriage

that thereafter, on February 5, 1935, a son, Joana De la Rosa, was

born to Joana Hernandez, which son is the intervening petitioner in

this suit; that on August 11, 1935, a railway was put between

Gerardo De la Rosa and Joana Hernandez, at which a priest officiated;

and it appears from the stipulated facts that neither Gerardo

De la Rosa nor Joana Hernandez, nor any other person on their behalf,

secured a license in accordance with the provisions of Chapter 22,

Sec. 8 of the Illinois State Bar Act, permitting them to be joined

a railway.

It then appears from the stipulation of facts, that on

February 17, 1935, Joana Hernandez died, and that on July 18, 1935,

Candelario De La Rosa died; that Felix De La Rosa is the father of Candelario De La Rosa; that the wife of the plaintiff and mother of the deceased died before Candelario De La Rosa; that subsequently, in 1931, Jesus De La Rosa, the intervening petitioner, was taken to Mexico with his maternal grandmother, where he lives today.

On March 29, 1926, Candelario De La Rosa, became a member of Swift & Company Employees' Benefit Association, and upon his death \$400 became due upon the policy, Swift & Company Employees' Benefit Association, defendant, properly paid the sum of \$122 to Harry A. Steven, undertaker, for funeral and burial expenses of Candelario De La Rosa, as provided for by the rules of Swift & Company Employees' Benefit Association, and there remains due on the certificate the sum of \$278 - the subject matter of this litigation.

As provided by the policy, the death benefit is payable, first to the member's wife, or if there is no wife living, then to the children collectively, each to be entitled to an equal share, and if there are no children, then to the father and mother jointly, or their survivor, and if they are dead, then to the next of kin.

The question involved in the case is the legitimacy of the boy, Jesus De La Rosa, who appears here by his guardian ad litem. It is apparent from the stipulated facts that Candelario De La Rosa and Juana Hernandez were not legally married, as no license was obtained permitting a marriage ceremony; that they had entered into a state of matrimony known as a common law marriage. However, the relationship adopted by the parties is no longer countenanced in this state. Sec. 4 of Ch. 89, Illinois State Bar Stats. of 1935, provides in part as follows:

"Provided, however, that all marriages commonly known as 'common law marriages,' hereafter entered into shall be and the same are hereby declared null and void unless after the contracting and entering into of any such common law marriage a license to marry be first obtained by such parties who have entered into such common law marriage and

Condelario De la Rosa died; that Felix De la Rosa is the father of Condelario De la Rosa; that the wife of the plaintiff and mother of the deceased died before Condelario De la Rosa; that approximately in 1931, Jesus De la Rosa, the intervening petitioner, was taken to Mexico with his maternal grandmother, where he lived until, On March 22, 1932, Condelario De la Rosa, became a member of Swift & Company Employees' Benefit Association, and upon his death \$400 became due upon the policy, Swift & Company Employees' Benefit Association, defendant, properly paid the sum of \$100 to Wm. A. Steyer, undersigned, for funeral and burial expenses of Condelario De la Rosa, as provided for by the rules of Swift & Company Employees' Benefit Association, and there remains due on the certificate the sum of \$300 - the subject matter of this litigation. As provided by the policy, the death benefit is payable, first to the member's wife, or if there is no wife living, then to the children collectively, each to be entitled to an equal share, and if there are no children, then to the father and mother jointly, or their survivor, and if they are dead, then to the next of kin. The question involved in the case is the legitimacy of the son, Jesus De la Rosa, who appears here by his guardian ad litem. It is apparent from the stipulated facts that Condelario De la Rosa and Emma Hernandez were not legally married, as no license was obtained permitting a marriage ceremony; that they had entered into a state of matrimony known as a common law marriage. However, the relationship adopted by the parties is no longer maintained in this state. Sec. 4 of Ch. 32, Illinois State Bar Statute of 1905, provides in part as follows:

"Provided, however, that all marriages commonly known as 'common law marriages', hereafter entered into shall be and the same are hereby declared null and void unless after due investigation and hearing proof of any such common law marriage is shown to have been entered into by such parties who have entered into such common law marriage and

a marriage be solemnized as provided by this act in the same manner as is provided for persons who have obtained a license to be joined in marriage and are about to be joined in any such marriage. And any children born to parties who have entered into such common law marriage shall be and they are deemed legitimate upon the parents having obtained a license to marry and are married in the manner provided in this Act."

This has been the law since July, 1909.

As a result of the relationship of these parties, this boy, the intervening petitioner, was born. It must be admitted that the parties having adopted a so-called common law marriage, a child born of this relationship would not be entitled to recover under the terms of the policy in question.

It is also apparent from the facts as we have them before us, that an attempt was made by Candelario De La Rosa and Juana Hernandez to have a marriage service performed in compliance with the law, when they appeared before a priest in a Catholic Church to have their marriage solemnized. However, no license had been obtained to have this ceremony performed, and we find from the statute above set forth, that in order to legitimize the child born of this common law marriage, a license to marry was necessary. It is clear from the statute that this boy is not a legitimate son of the late Candelario De La Rosa, and under the terms of the policy, the father of the deceased would be the only one entitled to recover the amount remaining due.

For the reasons stated, the judgment entered in the Municipal Court of Chicago, in favor of the intervening petitioner, is reversed, and judgment for \$278. is entered here for the plaintiff and against the defendant.

JUDGMENT REVERSED AND JUDGMENT HERE.

HALL, P.J. AND DENIS E. SULLIVAN, J. CONCUR.

in marriage be determined as provided by this act in the same manner as is provided for persons who have obtained a license to be joined in marriage and are about to be joined in any such marriage, and any children born to parties who have entered into such common law marriage shall be and they are deemed legitimate upon the parties having obtained a license to marry and are married in the manner provided in this act.

It has been the law since July, 1907.

As a result of the relationship of these parties, this day,

the intervening petitioner, was born. It must be admitted that the parties having adopted a so-called common law marriage, a child born of this relationship would not be entitled to recover under the terms of the policy in question.

It is also apparent from the facts as we have them before us,

that an attempt was made by Gaudin to be in Rome and during his absence have a marriage service performed in compliance with the law, when

they appeared before a priest in a Catholic Church to have their

marriage solemnized. However, no license had been obtained to have this ceremony performed, and we find from the statute above set forth,

that in order to legitimize the child born of this common law

marriage, a license to marry was necessary. It is clear from the

statute that this boy is not a legitimate son of the late Gaudin

de la Rose, and under the terms of the policy, the father of the

deceased would be the only one entitled to recover the amount remaining

in the policy. For the reasons stated, the judgment entered in the municipal

court of Chicago, in favor of the intervening petitioner, is reversed,

and judgment for \$275. is entered here for the plaintiff and against

the defendant.

FORWARD BY THE COURT.

ALL, 1-1-1911, 1-1-1911.

38371

WILLIAM EBERLING AND EDMUND A. EBERLING,

Appellants,

v.

ANTON KNITTELFELDER,

Appellee.

727
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 636

Opinion filed Nov. 20, 1935

MR. JUSTICE HEDEL DELIVERED THE OPINION OF THE COURT.

The plaintiffs upon a petition filed in this court were granted leave to appeal from an order entered by the trial court allowing defendant's motion to vacate the judgment and granting a new trial. The cause was tried in the Municipal Court of Chicago, which was an action in tort for conversion of certain goods and chattels of the plaintiffs, and in which a verdict of a jury was returned finding the defendant guilty of converting plaintiffs' goods of the value of \$1,000.

Defendant made a motion for a new trial, which was overruled, and on April 20, 1935, judgment was entered by the trial court upon the verdict of the jury. On May 9, 1935, the defendant filed his notice of appeal, together with a praecipe for record, and on May 17, 1935, the plaintiffs filed their notice of appearance.

The record shows that on May 17, 1935, the defendant moved the trial court to vacate the order overruling defendant's motion for a new trial and to vacate the judgment entered by the court upon the verdict of the jury, and in support of his motion defendant filed a petition and certain affidavits. The petition does not appear of record. The record also discloses that on May 28, 1935, leave was granted the defendant to withdraw his notice of appeal, and the court entered an order vacating the judgment entered for the plaintiffs on the verdict of the jury.

The sole question in this case is, whether the trial court

332 I.A. 636

Opinion filed Nov. 30, 1935

MR. JUSTICE MCKENNA DELIVERED THE OPINION OF THE COURT.

The plaintiff's upon a petition filed in this court were granted leave to appeal from an order entered by the trial court. Following defendant's motion to vacate the judgment and granting a new trial. The case was tried in the Municipal Court of Chicago, which was an action in tort for conversion of certain goods and chattels of the plaintiff, and in which a verdict of a jury was returned finding the defendant guilty of converting plaintiff's goods of the value of \$1,000.

Defendant made a motion for a new trial, which was overruled, and on April 30, 1935, judgment was entered by the trial court upon the verdict of the jury. On May 3, 1935, the defendant filed his notice of appeal, together with a purchase for record, and on May 17, 1935, the plaintiff filed their notice of appearance. The record shows that on May 17, 1935, the defendant moved the trial court to vacate the order overruling defendant's motion for a new trial and to vacate the judgment entered by the court upon the verdict of the jury, and in support of his motion defendant filed a petition and certain affidavits. The petition does not appear of record. The record also discloses that on May 28, 1935, leave was granted the defendant to withdraw his notice of appeal, and the court entered an order vacating the judgment entered for the plaintiff on the verdict of the jury.

The sole question in this case is, whether the trial court

within thirty days from the entry of the judgment still retained jurisdiction to vacate the judgment upon defendant's motion, notwithstanding the defendant had filed his notice of appeal after the judgment was entered. We believe the court, during the thirty day period after judgment, has jurisdiction to vacate the judgment upon such ground as would legally justify the court's action. In the case of Finkelstein v. Lyons, 250 Ill. 27, a somewhat analogous case, the court said:

"It has always been held in this state that the orders and judgments of a court are under its control during the term at which they are entered and may be set aside during the term. If the court may set aside a judgment during the term at which it was rendered, we see no reason why it may not set aside an order approving an appeal bond also. It would, of course, be necessary to vacate the order approving the bond before the judgment could be set aside, for until that was done the case would, as said in the cases relied upon by appellant, be considered as removed from the jurisdiction of the trial court to the court to which the appeal was taken." See also Briggs v. Dunne, 163 Ill. 36, cited with approval in the above opinion."

and in the case before us the trial court, before passing upon defendant's motion to vacate the judgment theretofore entered, passed upon defendant's motion to withdraw his notice of appeal and to withdraw the praecipe, and the court in considering said motion allowed the defendant to withdraw his appeal, and thereafter passed upon the questions properly before the court on defendant's motion to vacate the judgment and to grant a new trial.

Just as the Supreme Court stated in its opinion in the case of Finkelstein v. Lyons, *supra*, the trial court under the Civil Practice Act in force, may enter such order as may be necessary, and the court has jurisdiction during the period of thirty days from the date of the judgment to enter such further and other order as to the court may seem necessary.

The plaintiffs contend that in the absence of judicial decisions construing section 76 (2) of the Civil Practice Act in Illinois, they rely on the Ill. Civil Practice Act, Anno. compiled ^{under} /

within thirty days from the entry of the judgment still not in-
jurisdiction to vacate the judgment upon defendant's motion, not-
withstanding the defendant had filed his motion of a year after the
judgment was entered. He believes the court, during the thirty day
period after judgment, has jurisdiction to vacate the judgment upon
such ground as would legally justify its setting aside. In the
case of Winkelshtein v. Dyson, 133 Ill. 37, a somewhat analogous case,
the court said:

"It has always been held in this state that the orders and
judgments of a court are under its control during the term
at which they are entered and may be set aside during the
term. If the court may set aside a judgment during the
term at which it was rendered, we see no reason why it may
not set aside an order rendered on appeal and set aside the
judgment, of course, be necessary to vacate the order approving
the bond before the judgment could be set aside, for usually
that was done the case would, as said in the case relied
upon by appellant, be considered as removed from the juris-
diction of the trial court as the order is said to have been
was taken." See also King v. King, 133 Ill. 38, cited
with approval in the above opinion."

and in the case before us the trial court, before passing upon
defendant's motion to vacate the judgment thereupon entered, passed
upon defendant's motion to withdraw his notice of appeal and to with-
draw the proceeds, and the court in considering said motion allowed
the defendant to withdraw his appeal, and thereafter passed upon
the question properly before the court on defendant's motion to
vacate the judgment and to grant a new trial.
Just as the supreme court stated in the opinion in the case
of Winkelshtein v. Dyson, above, the trial court under the Civil
Practice Act in force, may enter such order as may be necessary, and
the court has jurisdiction during the period of thirty days from
the date of the judgment to enter such further and other orders as
to the court may seem necessary.

The plaintiff contends that in the absence of judicial

decisions construing section 74 (2) of the Civil Practice Act in
Illinois, that only in the Ill. Civil Practice Act, (Ill. Civ. Pr. Act)

the direction of the Illinois State Bar Association and edited by the authors of the act, and call this court's attention to the following statement:

"The provision in Section 76 (2) of the Civil Practice Act, that the appeal is perfected upon filing the notice and that steps thereafter to be taken are not to be jurisdictional, appears to mean that after the notice of appeal is filed, the appeal is perfected in the sense that jurisdiction over the appeal is placed in the court of review, and that then only the reviewing court may dismiss the appeal, except as to cases where specific provision is otherwise made. Such specific provision is made in the case where the praecipe is filed specifying the report of the trial proceedings if the report is not filed and approved within the time limited."

This quoted statement is not contradictory to what has been said by the Supreme Court in Finkelstein v. Lyons, supra, where the court made the statement, which we believe to be pertinent and worthy of repeating - that

"If the court (meaning the trial court) may set aside a judgment during the term at which it was rendered, we see no reason why it may not set aside an order approving an appeal bond also."

As we have already indicated, the trial court may, within thirty days after the entry of the judgment, enter such order as justice may require; and, of course, if the court within its discretion feels it is necessary for the purpose of administration of justice that the judgment be vacated, it has the jurisdiction to do so, and if it has jurisdiction within the thirty day limitation to vacate a judgment, we feel that by the adoption of the Supreme Court's ruling, under the prior Practice Act, which applies, the court may permit a party to withdraw his notice of appeal.

There is nothing before this court from which we can determine whether or not the court erred in its consideration of the alleged newly discovered evidence. However, we will assume that whatever was called to the attention of the court was properly

the direction of the Illinois State Bar Association and others
by the authors of the act, and call this court's attention to the

following statement:

"The provision in Section 75 (2) of the Civil Practice Act,
that the court is authorized to allow the parties to
that stage thereafter to be taken and not to be further
disposal, appears to mean that after the notice of appeal
is filed, the appeal is perfected in the sense that further
action over the appeal is placed in the court of review,
and that from that time the reviewing court may dispose of the
appeal, except as to cases where specific provision is
otherwise made. Such specific provision is made in the case
where the parties are filed specifying the report of the
trial proceedings if the report is not filed and approved
within the time limited."

This quoted statement is not contradictory to what has

been said by the Supreme Court in Wheeler v. Brown, where

the court made the statement, which we believe to be pertinent and

worthy of repeating - that

"If the court (meaning the trial court) may not make a
statement during the term at which it was rendered, we
see no reason why it may not make an order approving
an appeal bond also."

As we have already indicated, the trial court may, within

thirty days after the entry of the judgment, enter such order as

justice may require; and, of course, if the court within its discretion

deems it necessary for the purpose of satisfaction of justice

that the judgment be vacated, it has the jurisdiction to do so, and

it has jurisdiction within the thirty day limitation to vacate

judgment, as well as by the decision of the Supreme Court's

holding, under the prior practice act, which requires the court to

permit a party to withdraw his notice of appeal.

There is nothing before this court from which we can

determine whether or not the court erred in its consideration of the

filed nearly discovered evidence. However, we will assume that

however was called to the attention of the court was properly

considered and that there was no abuse of discretion in the entry of the order.

For the reasons stated the order vacating plaintiff's judgment and granting defendant a new trial is affirmed.

ORDER AFFIRMED.

HALL, P.J. AND DENIS E. SULLIVAN, J. CONCUR.

...and that there was no change of disposition in the early

...of the matter.

For the reasons stated the above suggested disposition

judgment and granting judgment is now filed in evidence.

ORDER AFFIRMED.

ALL, T. J. AND MISS E. G. GILMAN, J. J. GILMAN.

37885

SINCLAIR REFINING CO., a
corporation,

Defendant in Error,

v.

G. GRIECO, sometimes known as
JOSEPH GRIECO,

Plaintiff in Error.

73
ERROR TO

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 636²

Opinion filed Nov. 20, 1935

MR. JUSTICE DENIS E. SULLIVAN DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant, G. Grieco, from a judgment entered against him in the Municipal Court in favor of the plaintiff, Sinclair Refining Co., a corporation, for the sum of \$385 and costs. Recovery in favor of the plaintiff was had on notes given by the defendant to the plaintiff and the above named sum is the balance found to be due. No appearance was filed in this court by the plaintiff. Neither the record filed in this court nor the abstract for the same contain any evidence showing what happened at the trial had in the Municipal Court.

Further complaint is made by defendant of the court's action in striking defendant's affidavit of defense and setoff. The abstract of the record fails to disclose the contents of these affidavits.

Consequently, there being nothing before us to review the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

HALL, P.J. AND HEBEL, J. CONCUR.

28214.638

Opinion filed Nov. 30, 1935

MR. JUSTICE BRANDEIS delivered the opinion of the court.
This is an appeal by the defendant, W. H. Hines, from a judgment entered against him in the Municipal Court in favor of the plaintiff, Hines & Co., a corporation, for the sum of \$385 and costs. Recovery in favor of the plaintiff was had on a note given by the defendant to the plaintiff and the above named sum is the balance found to be due. No answer was filed in this court by the plaintiff. Neither the record filed in this court nor the abstract for the same contain any evidence showing what happened at the trial held in the Municipal Court. Further complaint is made by defendant of the court's action in excluding defendant's testimony of defense and costs. An abstract of the record fails to disclose the contents of the testimony.
Consequently, there being nothing before us to review the judgment of the Municipal Court is affirmed.
JAMES M. HARRIS.

38009

DANIEL L. LITEWSKI,

Plaintiffs - Appellee,

v.

G. BECKER COMPANY ROOFERS,
a corporation,

Defendant - Appellant,

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

282 I.A. 636³

Opinion filed Nov. 20, 1935

MR. JUSTICE DENIS E. SULLIVAN DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment rendered in the Municipal Court for the sum of \$500.00, for services as manager claimed to have been furnished by the plaintiff for the defendant as its request, for which the plaintiff has not been paid.

From the evidence before us it appears there is no dispute as to the hiring, nor length of service, the contention of the defendant being that although plaintiff did take charge of the business at the time of its former president's death, he was to be paid only if the business was successful. Plaintiff contends that he had a definite promise of \$25.00 a week and that he worked from July 1932 until August 1933. The undisputed evidence was that he received \$25.00 a week from the beginning of his employment until October 8, 1933.

There is no question of law involved in this case, but simply one of fact. The trial judge heard and saw the witnesses and after considering the conflicting statements on both sides, it was decided that the defendant owed the plaintiff \$500.00. We think the trial court was correct and the judgment of the Municipal Court is, therefore, affirmed.

JUDGMENT AFFIRMED.

HALL, P.J. AND HEBEL, J. CONCUR.

IN RE: [illegible]

Plaintiff - [illegible]

v.

THE [illegible] COMPANY, INCORPORATED
a corporation

Defendant - [illegible]

Opinion filed Nov. 30, 1938

822 I.A. 686

MR. JUSTICE [illegible] delivered the opinion of the court.

This is an appeal by the defendant from a judgment

rendered in the Municipal Court for the sum of \$200.00, for

services as a manager claimed to have been furnished by the plaintiff

for the defendant as its manager, for which the plaintiff has

not been paid.

From the evidence before us it appears there is no dispute

as to the hiring, nor length of service, the contention of the

defendant being that although plaintiff did take charge of the

business at the time of the former president's death, he was to

be paid only at the former president's discretion. Plaintiff contends

that he had a definite promise of \$200.00 a week and that he worked

from July 1935 until August 1936. The defendant witnesses say

that he received \$200.00 a week from the beginning of his employment

until October 3, 1936.

There is no question as to the facts in this case, but

merely one of fact. The trial judge heard and saw the witnesses

and after considering the conflicting statements on both sides, he

was decided that the defendant owed the plaintiff \$200.00. We

think the trial court was correct and the judgment of the Municipal

Court is affirmed, without costs.

ATTORNEY GENERAL

FILED IN THE COURT OF APPEALS

38161

80 F

ELI I. KLEINMAN and
SAMUEL H. KLEINMAN,
Complainants,

v.

METROPOLITAN CREDIT AND DISCOUNT
CORPORATION, a Delaware corporation,
METROPOLITAN FINANCE CORPORATION,
an Illinois corporation, MEYER S.
LANDFIELD, GEORGE J. BLOOM, DAVID
H. NEUMAN and HAROLD MAROVITZ,
Defendants.

MAGDALENA AMBORN, CARL C. ESPE and
ANNIS ESPE,
Appellees,

v.

METROPOLITAN CREDIT AND DISCOUNT
CORPORATION,
Appellant.

INTERLOCUTORY
APPEAL FROM
SUPERIOR COURT,
COOK COUNTY.

282 I.A. 6364

MR. JUSTICE SULLIVAN DELIVERED THE OPINION OF THE COURT.

This interlocutory appeal seeks the reversal of an order entered February 19, 1935, by the Superior court, appointing a receiver pendente lite for defendant Metropolitan Credit and Discount Corporation (hereinafter referred to as the Delaware corporation.)

January 15, 1932, Eli I. Kleinman and Samuel H. Kleinman filed their complaint against the Delaware corporation, the Metropolitan Finance Corporation (hereinafter referred to as the Illinois corporation), George J. Bloom, Meyer S. Landfield and others, alleging certain facts and praying for the following relief.

1. Eli I. Kleinman sought to recover on a note for

See MEMORANDUM OF THE
COMMISSIONER OF THE

17

1. The first of these is the fact that the
2. second of these is the fact that the
3. third of these is the fact that the
4. fourth of these is the fact that the
5. fifth of these is the fact that the
6. sixth of these is the fact that the
7. seventh of these is the fact that the
8. eighth of these is the fact that the
9. ninth of these is the fact that the
10. tenth of these is the fact that the

REFERENCES

[illegible]

• 1.33.2010 10:55 AM

• **2000**

See also 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 2690, 2691, 2692, 2693, 2694, 2695,

© 2000 Blackwell Science Ltd

1

[illegible]

• *Final Charge*

FORM 1041-10 (REV. 1-60) (SEE INSTRUCTIONS TO FORM 1041-10)

This introductory segment sets the reversal of an order

[illegible]

Downloaded from <http://ajphaphysiol.physiology.org/> at University of California - San Diego on June 11, 2015

NOV 19 1964

1. 1911

Journal of Management Inquiry 18(1) 3-13

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

William Finney Corporation (hereinafter referred to as the Plaintiff)

George A. Brown, Mayor of Detroit, Michigan, and others.

...the

11. I. Kishinevskiy, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, 1969, 1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2

\$47,500, executed by the Illinois corporation to his order on June 5, 1931.

2. Samuel H. Kleinman sought to recover on a note for \$47,500, executed by the Illinois corporation to his order on June 5, 1931.

3. Eli I. Kleinman and Samuel H. Kleinman sought to compel Landfield and Bloom to pay over to them one half of the salaries they had been drawing from the Illinois corporation and the Delaware corporation, amounting to \$400 a week, upon an alleged agreement of Landfield and Bloom to divide their salaries equally with plaintiffs.

4. Plaintiffs also sought to have Landfield and Bloom divide the class "C" voting stock of the Delaware corporation, issued in their names, with the Kleinmans equally, upon an alleged agreement between them, Landfield and Bloom, that the latter would purchase \$50,000 of class "C" stock of the Delaware corporation, half of same to be issued to plaintiffs.

5. Plaintiffs sought to have Landfield and Bloom return the salaries they had drawn from the Delaware corporation on the ground that same had not been authorized by its board of directors or were authorized by the illegal votes of themselves as directors.

6. Plaintiffs sought to compel an accounting by Landfield and Bloom to the Delaware corporation on the ground that they, while directors and officers of that company, lent money on chattel mortgages to its customers and retained profits therefrom which belonged to it, and that they sold chattel mortgages which were worthless to the said company at amounts greater than the value of said mortgages and made secret commissions and profits from their transactions and dealings with it.

7. Plaintiffs prayed to have a receiver appointed for the

100,000, executed by the Illinois corporation in his order on

June 2, 1921.

2. Samuel M. Klineberg sought to remove on a writ for

100,000, executed by the Illinois corporation in his order on

June 2, 1921.

3. Will T. Klineberg and Samuel M. Klineberg sought to

compel Klineberg and Klineberg to pay over to them one half of the

dividends they had been denied from the Illinois corporation and

the Illinois corporation, according to their stock, upon an alleged

violation of Klineberg and Klineberg to divide their salaries equally

with Klineberg.

4. Klineberg also sought to have Klineberg and Klineberg

with the Illinois "B" voting stock of the Illinois corporation, denied

their names, with the Klineberg equally, upon an alleged agreement

between them, Klineberg and Klineberg, that the latter would purchase

100,000 of Illinois "B" stock of the Illinois corporation, half of same

to be issued to Klineberg.

5. Klineberg sought to have Klineberg and Klineberg return

to Klineberg they had given from the Illinois corporation to the

board that same had not been authorized by the board of directors.

and authorized by the Illinois corporation to themselves as directors.

6. Klineberg sought to compel an accounting by Klineberg

to Klineberg of the Illinois corporation on the ground that they, Klineberg

and Klineberg, had been officers of that company, and Klineberg had

been in its business and retained profits therefrom which belonged

to Klineberg and they had sold shares of stock which were entitled to

the same amount of money as Klineberg had the value of such shares

and Klineberg had received and profits from their transactions and

profits from the same.

7. Klineberg sought to have a receiver appointed for the

Delaware corporation and for the dissolution of same.

8. Plaintiffs asked for an injunction restraining class "G" voting stockholders of the Delaware corporation from holding a meeting set for Monday, January 13, 1932.

October 14, 1931, plaintiffs were granted leave to amend their complaint by adding the averment that "they bring this suit and exhibit this bill of complaint on their own behalf and as creditors of and stockholders of the corporations which are defendants herein and on behalf of and for the benefit of all creditors and stockholders of said corporations (which are defendants hereto) similarly situated, who desire to join herein and share the cost of expenses hereof."

January 4, 1932, Magdalena Amborn, by leave of court, filed an intervening petition and on the same date, also by leave of court, Carl C. Espe and Annie Espe filed a separate intervening petition, in both of which petitions it was alleged that the interveners were stockholders of the Delaware corporation; that they were of the class of stockholders of defendant Delaware corporation for and on whose behalf Eli I. Kleinman and Samuel M. Kleinman, plaintiffs in this cause, had filed their complaint herein as amended, praying for an injunction restraining certain acts by said defendants, for dissolution, for an accounting and for other equitable relief against defendant Delaware corporation; that the complaint herein of Eli I. Kleinman and Samuel M. Kleinman, plaintiffs in this cause, as amended, was filed by said plaintiffs "as a class suit for and on behalf of each and every stockholder who should choose to join in said proceeding and who should be willing to share in the expenses thereof;" that they "join in and adopt each and every allegation" made in the complaint of the Kleinmans as amended "as if each averment were specifically set out herein;" and that they "join in, adopt and now ask for each and

Belmore Corporation and for the liquidation of same.

3. Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

Plaintiff asks for an injunction restraining

the defendant from doing any act which would

violate the terms of the contract.

every relief prayed for in said bill of complaint."

August 11, 1933, the Delaware corporation filed an amended answer to plaintiffs' complaint as amended, in which it averred inter alia that all the matters alleged in plaintiffs' complaint upon which they based their claims to relief occurred prior to November 25, 1931, when Eli I. Kleinman and Samuel H. Kleinman became stockholders of the Delaware corporation by purchase, transfer and assignment of stock of the said corporation from Landfield and Bloom; that as purchasers and assignees of such stock from Landfield and Bloom, Eli I. Kleinman and Samuel H. Kleinman "stepped into their shoes" with reference to all of the allegations contained in their complaint; and that, by reason thereof, they have no right to complain and cannot maintain a representative suit for themselves or in behalf of other stockholders of the Delaware corporation.

February 14, 1935, the intervening petitioners, Magdalena Amborn, Carl C. Wepe and Annie Wepe, were granted leave to file a petition for the appointment forthwith of a receiver for the Delaware corporation, in which it was charged that Landfield and Bloom, officers and directors of said corporation, and others, were guilty of additional misconduct from and after October 12, 1934, in connection with the business and affairs of that company.

After the Delaware corporation had filed an answer and pleas to this petition, a full hearing was had at which evidence was received under such petition, answer and pleas, which resulted in the entry of the order of February 19, 1935, appointing Edward C. Tudor receiver pendente lite of the Delaware corporation, as well as of the Illinois corporation, all the assets of which had been theretofore transferred and assigned to and the liabilities of which had been assumed by the Delaware corporation. This is the order appealed from.

The major contention of the Delaware corporation is that

the intervenors were not entitled to relief upon their petition for the appointment of a receiver because the Kleinmans, the original plaintiffs, could not under the law file a class or representative suit in behalf of themselves and other stockholders, including the intervening petitioners, inasmuch as the stock which they held and owned in the Delaware corporation was received by them as assignees of Landfield and Bloom, two of the individual defendants, whose alleged misconduct, upon which plaintiffs' claims are almost entirely predicated, occurred prior to the acquisition of the stock by the Kleinmans; that the Kleinmans merely "stepped into the shoes" of Landfield and Bloom in so far as their rights under the assigned stock were concerned; and that, the Kleinmans being without the right to bring a representative or stockholders' suit on the stock so held and owned by them, this was not a true class or representative proceeding in which the intervenors as stockholders might be permitted to intervene, and that they should not, therefore, have been allowed to file either their intervening petition or their petition for the appointment of a receiver.

This contention goes to the merits of this cause and so far as the record before this court is concerned the merits of the proceeding have not as yet been determined by the trial court. It is true that on the hearing before the chancellor on the intervenors' petition for the appointment of a receiver, counsel for the Delaware corporation introduced in evidence a stipulation entered into by counsel for the respective parties before the master, to whom the cause had been theretofore referred for a hearing and report on the merits, and that this stipulation was to the effect that the stock book record of the Delaware corporation shows the issuance to Eli I. Kleinman on November 25, 1931, of a certificate for 888 shares of class "C" stock of the corporation as the result

The instructions were not written in order when they were being

for the appointment of a receiver because the statement, the

original plaintiff, could not make the law firm a class or

representative suit in behalf of themselves and other shareholders,

including the following plaintiffs, numbered in the same order

they held and owned in the various corporations and companies of whom

no account of landfills and flows, two of the individual defendants,

shows alleged misfeasance, upon which plaintiff's claims are based

entirely questionable, occurred prior to the formation of the class

by the statement; that the statement merely "stated" that the flows

of landfills and flows is not in their claim which was assigned

what was assigned and that the statement failed to show the right

is based on representative or "class" suit as the basis to make

and owned by them, this was not a class suit or representative suit

existing in which the intervenor is not a class suit or representative

to intervenor, and that they should not, intervenor, have been allowed

as the class suit involving parties or their position for the

appointment of a receiver.

This contention goes to the merits of this case and

as far as the record before this court is concerned the merits of

the proceeding have not as yet been determined by the trial court.

It is true that on the hearing before the intervenor and the

Intervenor's position for the appointment of a receiver, intervenor

for the intervenor corporation intervened in this case, intervenor

intervenor into by counsel for the intervenor parties before the court,

it then the court had been thereupon related the intervenor and

expert as the parties and that this intervenor was in the wrong

that the stock book owned by the intervenor corporation owned the

Intervenor is not a receiver as Intervenor is not, as a shareholder

the Intervenor as Intervenor is not a shareholder as the Intervenor

of a transfer of that amount of stock by the individual defendant Bloom to Eli I. Kleinman, and the issuance to Samuel H. Kleinman of a certificate for 883 shares of stock of the same class on the same date as a result of the transfer of such stock to him by Landfield.

The stipulation, however, is in nowise conclusive of plaintiffs' claims. The Kleinmans' original complaint consists of 40 pages, in which they allege that Landfield and Bloom were guilty of many and diverse fraudulent acts and practices in their conduct of the business of the Illinois corporation and in their organization of the Delaware corporation and the handling of its affairs. They aver that they were originally engaged in the real estate business and that upon the organization of the Illinois corporation all the assets of their real estate business were turned over to that company, which also engaged in the mortgage business. They charged that Landfield and Bloom entered into an agreement with them whereby the Delaware corporation was to be organized to take over all the assets and business and to assume the liabilities of the Illinois corporation; that all the class "C" stock, which was the sole voting stock of the Delaware corporation, was to be issued by that corporation equally to Landfield and Bloom and the plaintiffs; that membership on its board of directors should be divided equally between Landfield and Bloom on the one hand and plaintiffs on the other; that, because plaintiffs trusted Landfield and Bloom and relied upon their honesty and experience in chattel mortgage affairs, they placed them in charge and caused them to be elected officers and directors of the Illinois corporation without any investment on their part of either money or property in that corporation; that, from the time they were elected as such officers and directors of the Illinois corporation and assumed control of same, they fraudulently and wrongfully conspired to cheat and defraud

of a resolution of that nature at which by the National Association
which is all I remember, and the resolution is contained in the
of a resolution for the purpose of giving it the same effect as the
some time as a result of the resolution at which it was by
Lansdowne.

The resolution, however, is in various particulars of
principles, stated. The resolution, which contains several of
40 pages, in which they state their principles and their views
of many of the various questions which are before the country
of the business of the Illinois corporation and its various operations
of the Illinois corporation and the various operations of the
every time they were particularly exposed in the various questions
and that upon the question of the Illinois corporation all the
effects of their various operations were shown to be that of the
which also appeared in the various questions, that showed that
Lansdowne and those who were in agreement with them through the
various corporations was to be regarded as just over all the various
and business and to remove the principles of the Illinois corporation
that all the other "people" were the same as the other side of the
Lansdowne corporation, and so to remove by that corporation equally to
Lansdowne and those who were in agreement with them through the
of business should be divided equally between the two sides and
the one side and principles as the other; that, however, principles
between Lansdowne and those who were in agreement with them through the
in various matters which were shown to be that of the
as the various questions of the Illinois corporation were
and the various questions of the Illinois corporation were shown to be
principles, that, from the time they were divided as they were
and the various questions of the Illinois corporation were shown to be
shown, that, however, principles and various questions of the Illinois corporation were shown to be

plaintiffs of their rights in the Illinois corporation and of their stock and rights in the Delaware corporation; that they fraudulently caused the Delaware corporation to withhold the issuance of the class "C" stock to plaintiffs, to which they were entitled, and caused all such stock that was issued by the Delaware corporation to be issued to them (Landfield and Bloom); and that plaintiffs were finally compelled by reason of the fraudulent conduct of Landfield and Bloom to purchase the class "C" stock in the Delaware corporation heretofore referred to from them.

Notwithstanding that the Kleinmans ultimately became purchasers and assignees of this class "C" stock from Landfield and Bloom, it may well develop on the hearing of this cause on the merits that the allegations of plaintiffs' amended complaint are sustained, and it may be found that through the fraud and connivance of Landfield and Bloom the Delaware corporation unlawfully and fraudulently withheld the issuance to plaintiffs of its class "C" stock to which they were rightfully entitled and caused the issuance of same to Landfield and Bloom. In any event we think that the Kleinmans made a sufficient showing in their complaint to maintain a stockholders or representative proceeding in behalf of themselves and all other stockholders similarly situated, and that the intervenors, as legal holders and owners of shares of stock in the Delaware corporation, were properly allowed to file their intervening petitions.

The order of the trial court appointing the receiver contained the following among other findings:

"That the said petition filed herein by said Magdalena Amorn and Annis Espe was filed on behalf of themselves and as representatives of all stockholders of the Metropolitan Credit and Discount Corporation, a corporation, who may join herein and contribute to the expense thereof.

"That the petitioners herein are the legal holders and owners of shares of stock of the Metropolitan Credit and Discount Corporation, a corporation, and that said petition has been properly filed.

"That the defendant, Metropolitan Credit and Discount

Corporation, is a corporation organized and existing under the laws of the state of Delaware, and is licensed and authorized to do business in the state of Illinois; that all of its property is located in the state of Illinois; that its directors and officers are residents of the state of Illinois; that the books of said company are located in the city of Chicago and state of Illinois; and that all of its business is transacted and its various contracts are negotiated and closed in said city and state.

"That the court has previously taken jurisdiction of this cause and of the parties herein, and that the defendants herein have heretofore submitted to the jurisdiction of the court and have filed answers and a cross bill.

"That in October, 1934, the defendants, Meyer S. Landfield and George J. Bloom, were officers and directors of the Metropolitan Credit and Discount Corporation, a corporation, and had been continuously since its organization in August, 1931, and so remained until February 4, 1935; that each received as his salary as such officer and director of said corporation, and for devoting all of his time in the employment of said company, the sum of \$200 per week, and that said salaries were paid until February 4, 1935.

"That in October, 1934, while the said Meyer S. Landfield was so employed by the Metropolitan Credit and Discount Corporation, and was one of its officers and directors, he caused to be organized an Illinois corporation under the name of Landfield Finance Company, with its principal place of business in Chicago, Ill.

"That in October, 1934, while the said George J. Bloom was so employed by the Metropolitan Credit and Discount Corporation, and was one of its officers and directors, he caused to be organized an Illinois corporation under the name of Illinois Credit Corporation, with its principal place of business in Chicago, Illinois.

"That the said Meyer S. Landfield and George J. Bloom furnished all of the capital and were the owners of the capital stock of each of said respective companies.

"That on or about the 2nd day of January, 1935, the said Landfield Finance Company opened an office at 134 North LaSalle Street, Chicago, Illinois, and on January 3, 1935, caused to be installed a telephone therein under the number, Randolph 2442.

"That on or about the 2nd day of January, 1935, the said Illinois Credit Company opened an office at 188 West Randolph Street, about one block away from the office of said Landfield Finance Company, and installed a telephone therein under the number of Randolph 2477.

"That notwithstanding the employment of said Meyer S. Landfield and George J. Bloom as officers and directors of said corporation, and the payment of said salaries by the said Metropolitan Credit and Discount Corporation, the said defendants for some time last past had been competing with the business of the said Metropolitan Credit and Finance Corporation by making loans to borrowers with their own funds and deriving a personal profit therefrom, and the Court finds that such acts of said persons were unlawful and fraudulent.

"That on or about the 4th day of February, 1935, the defendants, Landfield and Bloom, caused to be held a meeting of the Board of Directors of the defendant, Metropolitan Credit and Discount Corporation, said board of directors consisting of themselves and one Connelly; that at said meeting each of said defendants resigned as officer and director of said corporation, and caused to be elected in their place and stead one Isadore Levin, also known as Ira W. Loren, as president and director, one Joseph P. Frisch, as secretary and director, and Ernest P. Stocking, as director; and that said defendants, Landfield and Bloom, caused resolutions to be adopted or arrangements to be made to pay salaries out of the assets of said Metropolitan Credit and Discount Corporation as follows: \$50 per week to said Loren, and \$50 and \$60 per month to said Frisch and Stocking, respectively.

"That said defendants, Landfield and Bloom have taken

with them to their respective offices and corporations above mentioned the former employees of Metropolitan Credit and Discount Corporation, except one switchboard operator, and several laborers; and have caused to be referred and diverted to themselves and their respective corporations customers and prospective customers of said Metropolitan Credit and Discount Corporation.

"That said Levin or Loren has since February 4, 1935, been referring and sending to said defendants, Landfield and Bloom, and the new corporations organized by them, prospective customers who apply for loans to said Metropolitan Credit and Discount Corporation.

"That upon the hearing hereof, the said Levin or Loren resigned as president and director of the Metropolitan Credit and Discount Corporation, a corporation; and said offices remain vacant, and no responsible person is now properly in charge of the business and property of said Metropolitan Credit and Discount Corporation.

"That during the year 1934 the company has been operated at a loss of approximately \$38,000; that the assets of the company consist of approximately \$135,000 in financial paper, most of which is in default, and other property.

"That the acts of said Landfield and Bloom and the present directors of the corporation, who have been placed therein by said Landfield and Bloom, were and are unlawful and constituted wrongful waste and dissipation of corporate assets such as to constitute fraud, and have caused, and if not prevented would continue to cause irreparable injury to the stockholders; that a receiver should now be appointed for the purpose of conserving the assets of said corporation under the order and direction of this court; and that the said petitioners herein have no adequate remedy save through the entry of his order."

A careful examination and consideration of the evidence adduced at the hearing on the intervenors' petition for the appointment of a receiver convinces us that the above findings of the court are amply sustained by the evidence, and that the conditions disclosed by such findings rendered it imperative that the chancellor place a receiver in possession to conserve what was left of the assets of the Delaware corporation.

Other points are urged, but in the view we take of this proceeding we do not deem it necessary to discuss them.

Three motions have been heretofore made to dismiss this appeal, all of which have been reserved to hearing.

April 1, 1935, plaintiffs moved to dismiss the appeal on the ground that they had not been served with a copy of the notice of appeal filed by defendant Delaware corporation in the trial court. This motion is denied inasmuch as no notice of appeal is required in an appeal from an interlocutory order.

A motion was also made April 1, 1935, by the intervenors to dismiss the appeal because (1) the appeal bond is conditioned upon the successful prosecution of an appeal from an order entered February 20, 1935, appointing a receiver upon the application of Magdalena Amborn, Carl G. Espe and Annis Espe, whereas the order appealed from appointing the receiver was entered February 19, 1935, upon the application, as stated in the order, of Magdalena Amborn and Annis Espe; and because (2) the appeal bond was filed February 27, 1935, before the appeal was taken by filing the notice of appeal on March 1, 1935. As to the second reason urged in support of this motion, it is sufficient to repeat that no notice of appeal being required on an appeal from an interlocutory order and the appeal bond having been filed in apt time, the time of filing the notice of appeal may be disregarded.

As to the first reason assigned for the allowance of this motion, we think that the recital in the condition of the bond clearly indicates that the appeal was taken from the only order appointing a receiver in this cause up to that time and that the misdescription of the date of the order does not present sufficient ground for the dismissal of the appeal. The order was entered upon the petition and application of the three intervenors and the fact that the name of one of the intervenors was inadvertently, no doubt, omitted from the order can hardly be held to vitiate the bond. Even though the above misrecitals in the bond were fatal, the appeal should not be dismissed without affording appellant an opportunity to furnish a sufficient appeal bond. (Dietrich v. Rumsey, 40 Ill. 50.) No motion having been made in this court for a rule on appellant to furnish a sufficient appeal bond, the instant motion to dismiss this appeal is now denied.

April 30, 1935, the intervenors moved to dismiss the appeal on the ground that it involved only a moot question, a final decree having been entered appointing the receiver pendente lite

as permanent receiver and adjudicating some of the phases of the litigation. This interlocutory appeal is from the order of February 19, 1935, and we must determine the appeal by the record as it was on that date. (Bauer v. Lindgren, 279 Ill. App. 307.) The matters urged by the intervenors in support of their motion of April 30, 1935, to dismiss the appeal, having occurred since the entry of the order appealed from, must perforce be disregarded and this motion to dismiss the appeal also denied.

We are of the opinion that there is ample justification in the record for the appointment by the chancellor of the receiver pendente lite. The order of the Superior court is therefore affirmed.

AFFIRMED.

Scanlan, P. J., and Friend, J., concur.

as a government receiver and administrator of the assets of the
 corporation. This receiver is to be appointed by the court
 in, 1938, and he must deliver the assets to the court by the
 end of 1938. (Exhibit A, Attachment, 17-18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838,

38320

GEORGE H. BOGNER,
vs. Appellant,

NEW AMSTERDAM CASUALTY COMPANY,
a Corporation, Appellee.

APPEAL FROM SUPERIOR COURT
OF OREGON COUNTY.

282 I.A. 637

MR. PRESIDING JUSTICE McHUGHLY
DELIVERED THE OPINION OF THE COURT.

Upon trial, at the conclusion of plaintiff's case, the court instructed the jury to find for the defendant, and from the judgment upon the verdict plaintiff appeals.

Defendant had issued its accident liability insurance policy to Louis J. Fult; in August, 1937, plaintiff Bogner, while riding with Fult in his car, was injured through the negligent driving of Fult; he brought suit and had a judgment against Fult; execution was issued on the judgment and returned he part satisfied. Fult is insolvent and the judgment has not been paid.

Plaintiff sued the defendant pursuant to a provision in the insurance policy held by Fult which provided that, if by reason of the insolvency of Fult an execution against him should be returned unsatisfied, the judgment creditor would have a right of action against the defendant for the amount of the judgment to the same extent that Fult would have been entitled to recover had he paid the judgment. Bogner's judgment against Fult was for \$2000. Defendant by its insurance policy agreed to defend any suit brought against Fult and to pay any judgment not in excess of \$10,000.

Defendant by the general issue denied liability and pleaded specially that Fult had not complied with the condition of the policy requiring him to give immediate written notice of any suit, together with the summons, to the defendant. The policy contained the condition that "The assured shall give immediate written notice of any accident, and like notice of any claim or suit resulting therefrom, together with every summons or other process to the

Executive Office of the Company at Baltimore, Maryland, or to its authorized representative." Plaintiff asserts that Fult gave proper notice and that in any event defendant waived strict compliance with this provision of the policy, and that the evidence tending to support these defenses presented questions of fact which should have been left to the jury to determine.

Plaintiff admits that Fult did not send any notice to the executive office of the defendant company at Baltimore, Maryland, but asserts that he did give notice to defendant's authorized representative, as permitted by the provision of the policy above quoted.

Howard Rice was the general manager in charge of the claim department of the defendant company and had supervision over the accident in which plaintiff was involved with Fult. It was stipulated that Hugh McBarren at the time in question was employed by defendant. Counsel for defendant say he was employed as an "investigator of facts only." Counsel for plaintiff apparently did not stipulate that this was the exclusive work of McBarren, and contends that the evidence shows that he had greater authority with reference to the case of Begner v. Fult.

Counsel for defendant apparently admitted on the trial that it had notice of the accident, saying, "We do not deny we got notice of the accident." Fult received the summons in the case of Begner v. Fult and on the same day telephoned McBarren that he had been served with summons, and was told that McBarren would call upon him in a day or two and take care of the matter; a day or two later McBarren called upon Fult, who gave him the summons, and McBarren told Fult not to worry about the matter, that he would take care of it; some weeks after that McBarren again called on Fult and inquired as to why he and Begner could not get together to effect a settlement; Fult informed him that Begner "will not accept your proposition." Fult testified that he first saw McBarren two weeks after the

[illegible][illegible][illegible]

automobile accident; that he informed him Bogner was in a very serious condition, was in the hospital; McBarren inquired as to the hospital and said he was going up to see Bogner and would take care of everything; shortly thereafter Pult again saw McBarren with reference to a letter from the telephone company threatening suit against Pult for knocking down a telephone pole in the accident; Pult gave McBarren the letter, who again promised to "take care of it." The parties had another meeting, at the home of Bogner, at which were present Bogner, Pult, McBarren and Bogner's mother; McBarren made a notation as to the hospital expenses of Bogner and what it would cost to take him to a hospital and return him home; it was agreed that a list should be made out of all expenses; at this meeting McBarren said he was representing the defendant company. Pult had other conferences with McBarren about the accident case, in which McBarren again said he would take care of it. He also promised to take care of the bill of the telephone company.

On the morning the case of Bogner v. Pult was called for trial in the Circuit court of Cook county, Pult called up the office of the defendant and inquired for Mr. McBarren and was told he was not in; he then talked with a man in the office named Alexander, who told Pult he was not interested in the case and would not attend the trial.

Upon the trial of the present case the summons was in the custody of the attorney for defendant and was produced in court. It was stipulated that it was the original summons in the case of Bogner v. Pult, showing service upon Pult. Pult apparently received a letter from the attorneys for Bogner that they would move the court to enter judgment by default against him and assess damages, and Pult testified that he gave notice to defendant "of all communications received by me by delivering them to Mr. McBarren." He

Further said that he had testified in the case of Bogner v. Pult as to how the accident happened.

Edward H. Stearns was the attorney for Bogner in his case in the Circuit court against Pult. He testified that he communicated with the defendant Casualty Company in connection with the accident; that he knew Howard J. Rice, the general manager in charge of the claim department, and talked to him over the telephone in May, 1933, regarding the accident, also thought that he had had a conference with Mr. Rice in the latter's office; that he told Mr. Rice that he was representing Bogner, who had a claim against Pult arising out of an accident; that he understood that Pult had insurance with defendant company and inquired as to whether there was any chance for a settlement; Mr. Rice told the witness that Mr. McFarren was handling this matter, and that he, Rice, would have him call at Stearns' office about it. Following this, McFarren called upon Mr. Stearns, saying he represented the defendant company, and they discussed the claim of Bogner against Pult and the facts of the accident, and Stearns told McFarren that in his opinion the insurance company ought to make a settlement, to which Mr. McFarren replied he did not think the defendant company should settle as "it was a guest case."

Defendant's position seems to be that the failure of Pult to give a "written notice" of the accident relieves defendant from liability under the policy. It was for the jury to determine whether the delivery of the summons to defendant, together with the information given by Pult to McFarren, was sufficient notice. In Anderson v. Inter-State Accident Assoc., 354 Ill. 536, where only one of two required notices was given defendant, it was held that the one document "contained all the essential and necessary information to enable defendant to conduct an inquiry of its own and determine its liability." In Scott v. Inter-Insurance Exchange,

Further said that he was satisfied in his own mind as to the
truth of the statements made.

Edward A. Brennan was the attorney for the defendant in the
above case.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

He said that the defendant's attorney, Edward A. Brennan, was
not present at the hearing.

382 Ill. 572, two notices to the defendant of the accident were required by the policy; the plaintiff communicated only once with the insurance company; the court held that only substantial compliance was required and that knowledge of the company of the whole situation because of the single notice given was sufficient to determine the defendant's liabilities. This case also reiterated the well known rule that, the insurer having framed the contract it will, in case of doubt, be construed most strongly against it and in favor of the assured. There was sufficient evidence of McBarron's authority to represent the defendant company to go to the jury. Mr. Rice, the general manager of the defendant's claim department, had delegated authority to McBarron to handle the claim of Bogner v. Fult. At least, it was for the jury to determine the extent of McBarron's authority. Phenix Ins. Co. v. Glasgow, 149 Ill. 319; Meyer v. Iowa Mutual Liability Ins. Co., 240 Ill. App. 431.

An agent may have authority to waive any objections to the sufficiency of the notices required by the insurance policy. Fray v. National Fire Ins. Co., 341 Ill. 431; Smith v. St. Paul Fire & Marine Ins. Co., 204 Ill. App. 575.

Defendant says that plaintiff cannot claim any waiver because his declaration alleged full compliance by Fult with the provisions of the policy and made no allegations of waiver, citing Feder v. Midland Casualty Co., 316 Ill. 553, and other cases. In these cases no attempt was made to comply with the provisions requiring notice, and it is held that in such cases waiver must be pleaded. But a different situation arises where there is an attempted compliance with the provisions of the policy and the question involved is whether there was a sufficient compliance. This question was considered in Weininger v. Metropolitan Fire Ins. Co., 352 Ill. 584. A variance between the pleadings and the proof was there asserted, plaintiff alleging performance of the condition:

of the policy where the facts tended to show a waiver of performance. The opinion distinguishes between the facts considered in Feder v. Highland Casualty Co., *supra*, where there was no attempted compliance with the policy requirements. But the Waininger case presented not a waiver of performance but simply a waiver of the manner and form of proof of loss. This applies to the instant case. Here there was no failure to inform the defendant company of the accident and of the claim of Fogner against the defendant's insured, Fult. The summons in that case was promptly delivered to the defendant's agent and numerous interviews were had relative to the accident. The question whether McBarren as the authorized agent of defendant did in fact waive objections to the manner and form of Fult's notice to the defendant should properly have been submitted to the jury for determination. Gray v. National Fire Ins. Co., 341 Ill. 431.

We are of the opinion the evidence presented facts for the determination of a jury and that it was error to instruct peremptorily for the defendant. For the reasons indicated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Matchett and O'Connor, JJ., concur.

38334

PAUL L. RITTENHOUSE,
Appellee,

vs.

HERBERT L. DILLON et al., Copartners
trading under the style and name of
EASTMAN, DILLON & COMPANY,
Appellants.

APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 637 2

MR. PRESIDING JUSTICE MCGURLEY
DELIVERED THE OPINION OF THE COURT.

Defendants ask for the reversal of a judgment against them for \$4225.00 in an action brought under section 37 of the Illinois Securities Law. (Cahill's Ill. Rev. State., chap. 32, par. 290.) Plaintiff sought to recover from his agents, or brokers, the purchase price of certain securities not qualified under the statute, and attorney's fees. The facts are stipulated.

March 15, 1930, plaintiff, without advice or solicitation from any of the defendants, who are stock brokers, or their agents, requested them to purchase for him at the then market price fifty shares of common stock of the Bank of the United States and fifty shares of common stock of Bankus Corporation. These stocks were not at the time qualified or approved under the Illinois Securities Law. Defendants were not underwriters of the stock, had no interest in it and had none of it for sale. Pursuant to plaintiff's request defendants purchased "for the plaintiff's account" the stock and delivered the certificates to him, billing him for the purchase price, plus defendants' brokerage commission. Plaintiff paid this.

April 10, 1934, plaintiff demanded of defendants the return of the amount he had paid for the stock. There is no evidence that defendants had any knowledge that the securities were not qualified for sale in Illinois.

The question presented is whether a customer can recover, under the Securities Law, from his own agent and broker who has

purchased stock, in which the broker has no interest, at the request and order of the plaintiff. Plaintiff's brief says that this identical question is presented to this court in the case of Weisbrod v. Lewitz et al., No. 38764. On November 12, 1956, we handed down an opinion in that case. We there said, among other things:

"Plaintiff's argument that the act applies to anyone participating in the transaction, even as the agent for the buyer, ignores any distinction or difference between a buyer and a seller. Clearly the legislature did not intend to penalize the buyer in such a transaction, and it would be illogical and abnormal to penalize the buyer's agent who was acting for his principal."

For the reasons stated in the opinion in that case we hold that under the admitted facts in the instant case defendants are not liable.

The judgment is therefore reversed, and as the case was tried by the court without a jury it will not be remanded.

REVERSED.

Matchett and O'Connor, JJ., concur.

...in the ... of the ...
... of the ...
... of the ...
... of the ...
... of the ...

... ..

... ..
... ..
... ..
... ..
... ..

... ..
... ..
... ..
... ..

... ..
... ..
... ..

... ..

38343

CHICAGO TITLE & TRUST CO., a
Corporation, etc., Appellee,

vs.

LOUIS SHAPIRO,
Appellant.

83
APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 637³

MR. PRESIDING JUSTICE McGUIRE
DELIVERED THE OPINION OF THE COURT.

In a foreclosure proceeding complainant's motion for a receiver was continued and defendant was ordered by the court to collect rents from and to manage the premises involved, reporting to the court; he filed a report of his collections and expenditures, to which complainant filed objections which were sustained, and defendant was ordered to pay complainant \$1435, which the court found was an unauthorized withdrawal of the income produced by the premises, and also to pay \$5307.79, representing the balance of net rental collections. On this appeal defendant questions only the right of complainant to have a receiver appointed, and says that he, as mortgagor, was entitled to the rents of the premises until the actual appointment of a receiver.

Complainant's bill of foreclosure was filed June 19, 1933, together with a motion for the appointment of a receiver; counsel for defendant suggested to the court that a receiver was an unnecessary and avoidable expense and that in lieu of a receiver the court enter an order placing the defendant in possession of the premises with directions to manage the same and account for the rentals from month to month so that the net balances could be applied on taxes and the indebtedness; the court accordingly, on June 19th, continued the motion for a receiver and entered an order as suggested by defendant's attorney, giving the management of the premises to the defendant, directing the manner in which defendant should collect the rents, and specifically ordering him to account

from month to month to the solicitor of complainant, turning over the net balances in his hands, which were to be applied first to the payment of the real estate taxes and secondly to the mortgage indebtedness.

Commencing with July 15, 1933, and monthly thereafter for a period of approximately eight months, defendant rendered monthly reports and accounts in accordance with the order, making certain deductions, however, to which complainant objected; from March, 1934, to February, 1935, inclusive, defendant submitted no reports and did not account for the rentals as provided in the order. Complainant filed his petition setting forth the order of June 19th, and asking that the defendant be ordered to restore the sum of \$1435 wrongfully taken by the defendant from the income and commencing the defendant to account for the rentals, disbursements and net balances for the months from March, 1934, to February, 1935, inclusive; complainant also asked for the appointment of a receiver; defendant was ruled to file an answer to the petition but did not do so, and on February 28, 1935, a receiver was duly appointed.

The time for defendant to file an answer to this petition was extended; the matter was continued several times, and finally, on April 10, 1935, the court entered an order finding that defendant had wilfully and unlawfully refused to account to the court and he was ordered to appear before the court to show cause why he should not be held in contempt for refusing to comply with the court's orders; subsequently defendant presented his answer to this rule, attaching what purported to be an accounting; complainant filed objections to this account, and upon hearing the objections were sustained and the defendant was ordered to pay the amounts above stated. From this order defendant appeals.

In support of his point that complainant was not entitled to a receiver, defendant cites Frank v. Siegel, 263 Ill. App. 316,

the not balance in 1960, when there was a surplus of 100 million dollars. The surplus of 100 million dollars was the result of the surplus of 100 million dollars.

...and
... ..
... ..
... ..
... ..
... ..
... ..

[illegible][illegible]

THESE ARE THE ONLY TWO COPIES OF THE DOCUMENTS IN THE
FILE. THE OTHERS HAVE BEEN DESTROYED.

Is account of his being that would not be sufficient

where this court held that a chancellor should not appoint a receiver solely upon the averment in the bill of a default in payment of the indebtedness and that the trust deed conveyed the rents and profits as part of the security. The present bill contains many other allegations than these. It asserts that the total first mortgage indebtedness is in excess of \$177,100; that there was default in the payment of real estate taxes for the years 1930 to 1932, inclusive; a junior mortgage in the sum of \$131,875 in default; that the value of the premises conveyed by the mortgage is less than \$161,000, and that the mortgagors have no assets other than the premises. These allegations disclose facts tending to show that the mortgaged premises were scant and insufficient security for the mortgage debt and justified the appointment of a receiver. Ingles v. Rosenthal, 274 Ill. App. 272; Falcetti v. Krolik, 234 Ill. App. 407.

As to the point that defendant, the mortgagor, was entitled to the rents and profits until a receiver was actually appointed, it is sufficient to refer to the recent case of State Bank & Trust Co. v. Massion, 279 Ill. App. 234, in which leave to appeal was denied by the Supreme court (same volume, page xviii.) There the facts were very much like those in the present case. There complainant in a foreclosure proceeding asked for a receiver; the court continued the motion and entered an order directing the defendant mortgagor to manage the property, collect the rents and account for the same; the defendant there contended that as she was the mortgagor in possession she was entitled to the rents until a receiver was actually appointed. We there said:

"While it is true that the owner of the equity of redemption is entitled to the rents of the mortgaged premises until the mortgagee takes actual possession or until a receiver is appointed and takes possession, yet, viewing the proceedings heretofore noted, the conclusion is manifest that the order of the court that defendant should remain in possession of the premises, collect the rents, deposit them with the court, pay expenses of operation under orders

of the court, was in practical effect the appointment of a receiver by the court. While there was no formal order appointing a receiver, the order entered had all the practical effect of an appointment of a receiver and it was understood that defendant was to act as a receiver."

We cited Hall v. Seligman, 135 Can. 247, involving a similar question. It was there held that any proper procedure which would empower the court to control the rents and profits was sufficient to vest the complainant with the title thereto, and that the appointment of an agent to collect the rents had the practical effect of an appointment of a receiver by the court. Supporting this rule are Hatchinson v. Straub, 64 Ohio St. 413, First Savings Bank & Trust Co. v. Stuppi, 2 Fed. (2d) 897, and Atlantic Trust Co. v. Bang, 126 Fed. 209. These latter cases held that so long as the court has control of the income it is immaterial by what manner the control was obtained.

For the reasons above indicated, we see no reason to disturb the order of the chancellor and it is affirmed.

AFFIRMED.

Hatchett and O'Connor, JJ., concur.

38352

MAURICE A. SPALDING,
Appellant,

vs.

DORA SPALDING,
Appellee.

APPEAL FROM SUPREME COURT
OF COOK COUNTY.

282 I.A. 637⁴

MR. PRESIDING JUSTICE MCGURLEY
DELIVERED THE OPINION OF THE COURT.

A decree was entered granting defendant cross complainant a divorce from the complainant; as a frehold was involved complainant appealed directly to the Supreme court; to enable defendant to follow that appeal the chancellor ordered Maurice Spalding to pay her \$2500 in certain installments; complainant appeals from this order.

Appellee has moved for the transference of this appeal to the Supreme court, which motion was reserved to hearing. As the Supreme court has rendered an opinion in this case (261 Ill. 347) there is no ground for so ordering and the motion is denied.

The evidence has not been preserved. The order shows that a hearing was had at which both parties were present, and includes a finding that the defendant is financially unable to retain and pay counsel to follow up the appeal to the Supreme court. Complainant questions the order on the ground that there is no finding or evidence in the record of the ability of the husband to pay the solicitors' fees awarded, citing Blake v. Blake, 86 Ill. 503, and Arado v. Arado, 281 Ill. 123. Under the present Practice act, chap. 110, par. 192, sub-par. 3, it is not necessary in a chancery case to preserve the evidence or to incorporate the findings of the decree in order to sustain the decree. The chancery practice in this respect is now the same as the practice in law. Hick v. Hick, 277 Ill. App. 329; First Nat. Bank v. 10 W. Elm St. Bldg. Corp., 277 Ill. App. 357. The evidence not being preserved it will be presumed that the court heard evidence sufficient to justify the entry of the order.

Even if this were not the practice, the decree shows that complainant had in his possession ample means to justify the order. It found that he was a joint tenant with defendant in an apartment building for which they paid \$45,000; that he owes her over \$12,000, which he is ordered to pay to her.

Moreover, in the Supreme court opinion it was held that the decree of divorce for the husband's fault was properly entered; that at the time of the marriage the wife had an estate worth about \$80,000 and the husband no property; the opinion examines the accounting with much detail. It was held that the decree erroneously required the husband to pay the wife \$8750 for rent and living expenses paid by her; also, that the decree erroneously charged against the husband \$6700, the purchase price of two automobiles; the opinion finds that the complainant was a doctor and that he testified that his earnings from his profession from 1925 to 1931 were from \$40,000 to \$60,000; the opinion also found that the husband and wife were joint tenants in the apartment building property above referred to; the opinion also makes disposition of other items presented in the accounting between the parties. The Supreme court opinion has added to the husband's property and, by the same account, has deprived the wife. In view of the showings made in both the decree and the Supreme court's opinion, we hold that the order awarding alimony was justified.

For either or both of the above reasons the order is affirmed.

AFFIRMED.

Hatchett and O'Connor, JJ., concur.

PEOPLE OF THE STATE OF ILLINOIS,
for the Use of DORA EPESTEIN,
Appellant,

vs.

ALBERT J. MORAN, Bailiff of the
Municipal Court of Chicago, and the
FIDELITY AND CASUALTY COMPANY OF
NEW YORK, a Corporation,
Appellees.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 637⁵

MR. PRESIDING JUSTICE MASURELY
DELIVERED THE OPINION OF THE COURT.

Dora Epstein, hereafter called plaintiff, brought suit upon the official bond of defendant Moran and his surety; on trial by the court the judgment was against her and she appeals.

The declaration alleged that Moran, as bailiff of the municipal court, levied upon certain goods alleged to be owned by a judgment debtor but which were found by the court in an action of right of property to belong to plaintiff; that the goods were never delivered to plaintiff, to the damage of plaintiff in the sum of \$2000. There is virtually no dispute as to the facts.

Defendants make several points to support the judgment but it is necessary to notice only one of them. Subsequent to the entry of the finding of the right of property in plaintiff her attorney inquired at the office of the defendant bailiff relative to the possession of the goods; he was told by the deputy in charge of the levy that a warehouse receipt for the goods would be delivered to him but that he would have to take up with the warehouse the matter of its charges. The attorney first refused to accept the warehouse receipt subject to the warehouse charges but subsequently did so. The warehouse receipt was endorsed in blank by the defendant bailiff, with directions to the warehouse to deliver the goods to the bearer upon payment of charges. The attorney accepted the receipt so endorsed and in turn gave a receipt for it to the defendant bailiff.

Defendant having delivered the receipt to plaintiff's

REPORT ON THE STATE OF ILLINOIS,
FOR THE YEAR OF 1900.
CHICAGO, ILLINOIS.

BY

ALBERT J. BROWN, SECRETARY OF THE
COMMISSIONERS OF THE LAND,
MINES AND FOREST, AND THE
COMMISSIONERS OF THE
LAND, MINES AND FOREST,
CHICAGO, ILLINOIS.

882 L.A. 887

AL. BROWN, SECRETARY OF THE
COMMISSIONERS OF THE LAND,
MINES AND FOREST, CHICAGO, ILLINOIS.

THE STATE OF ILLINOIS, BEING A
REPORT ON THE STATE OF ILLINOIS,
FOR THE YEAR OF 1900.
CHICAGO, ILLINOIS.
BY
ALBERT J. BROWN, SECRETARY OF THE
COMMISSIONERS OF THE LAND,
MINES AND FOREST, AND THE
COMMISSIONERS OF THE
LAND, MINES AND FOREST,
CHICAGO, ILLINOIS.

attorney, with the endorsement that the goods should be delivered to her upon payment of the charges, she accepted it subject to the conditions. Thus she had constructive possession of the goods and waived any right of action she might have arising out of the making of the levy.

The warehouse did not possess the goods at the time of the trial, so it will be presumed that they were delivered, pursuant to the receipt, to plaintiff or her attorney, or as ordered by them.

Moreover, the circumstances surrounding the transaction throw some doubt as to the bona fides of plaintiff's claim that the goods were not delivered to her. The original judgment was against Isadore J. Schiller; levy was made upon the office furniture in the possession of Schiller. Schiller is a nephew of the plaintiff, Bora Epstein. She filed a claim to the furniture, apparently by virtue of a chattel mortgage from Schiller; this chattel mortgage was not introduced in evidence in this case. Upon making the levy the goods were sold to a Mr. Trum, a friend of the attorney for plaintiff; this attorney paid storage subsequent to the time of sale to Mr. Trum and gave orders for the removal of the goods from the warehouse; thereafter they appeared in the office of the Lake Shore Realty Company, a corporation of which Mr. Schiller, the judgment debtor, is vice-president. Schiller testified that the goods were not purchased from Trum but from a stockholder of the Realty company named Korach. It does not appear how Korach got possession of the goods. Plaintiff never demanded possession of the goods from the Realty company and has never been paid any part of the money alleged to be due her upon the chattel mortgage.

The circumstances give point to the suggestion by counsel for defendants that the entire transaction constituted a family affair.

We are of the opinion that the judgment was proper and it is affirmed.

Watchett and O'Connor, JJ., concur.

AFFIRMED.

the ending of the story.

to the receipt, in full, of the money, as at stated by
trial, as it will be given and not being more than
the amount of the money and not more than the sum of the

[illegible]

Approved by the President of the United States and the Secretary of the Navy
and the Secretary of the Army

It has been my hope that our past meetings will be of

38385

ESTHER JAMISON, Administratrix of
Estate of JAMES WATSON, Deceased,
Appellee,

vs.

UNITED DAIRY COMPANY, a Corporation,
Appellant.

APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 6381

MR. PRESIDING JUSTICE MCSURELY
DELIVERED THE OPINION OF THE COURT.

James Watson, hereafter called plaintiff, was struck by a truck owned and operated by defendant and died from the injuries received; his administratrix brought suit and had a verdict and judgment against defendant for \$5460. Defendant appeals.

The accident happened in the early morning of January 29, 1933, on Cottage Grove avenue, which at this point runs in a south-easterly direction and near 34th street. Plaintiff was employed as a conductor by the Chicago Surface Lines; he was on his way to work, alighting from a north bound ^{street} car on Cottage Grove a little south of 38th street; on the west side of Cottage Grove at this point is the car barn of the street car company and the plaintiff was in the act of crossing the street, going west toward the car barn, when he was struck by a south bound milk truck belonging to defendant.

Defendant argues that the evidence fails to prove plaintiff was in the exercise of due care, and also fails to prove the negligence of the defendant. There were very few occurrence witnesses. James Keating testified that at about 4:30 a. m. he was driving an automobile south on Cottage Grove avenue in the south bound street car tracks, approaching 38th street; that defendant's truck, when north of 38th street, was traveling on the witness' right; that the street car was coming north; when the witness was at 38th street defendant's truck passed him on the right and cut in front of the witness' automobile and continued southward on the south bound track; the street car passed Keating at 38th street just as defendant's truck cut in ahead of him. Keating testified that

RECEIVED
OFFICE OF THE
SHERIFF
JAN 10 1900

100

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON

100

UNITED STATES
DEPARTMENT OF JUSTICE
WASHINGTON

James Wilson, hereinafter called defendant, was seized by a
process issued and returned by the United States Marshal for the
District of Columbia; his residence being at No. 1000 14th Street
North, Washington, D. C. The residence was known to the United States
Marshal at the time of the seizure, which was made on January 10,
1900, on College Avenue, which is the same as the residence of the
defendant. The residence was known to the United States Marshal at the
time of the seizure, which was made on January 10, 1900, on College
Avenue, which is the same as the residence of the defendant. The
residence was known to the United States Marshal at the time of the
seizure, which was made on January 10, 1900, on College Avenue,
which is the same as the residence of the defendant. The residence
was known to the United States Marshal at the time of the seizure,
which was made on January 10, 1900, on College Avenue, which is the
same as the residence of the defendant. The residence was known to the
United States Marshal at the time of the seizure, which was made on
January 10, 1900, on College Avenue, which is the same as the
residence of the defendant. The residence was known to the United
States Marshal at the time of the seizure, which was made on January
10, 1900, on College Avenue, which is the same as the residence of
the defendant. The residence was known to the United States Marshal
at the time of the seizure, which was made on January 10, 1900, on
College Avenue, which is the same as the residence of the defendant.

Defendant's agent at the residence of the defendant at the time of
the seizure, which was made on January 10, 1900, on College Avenue,
which is the same as the residence of the defendant. The residence
was known to the United States Marshal at the time of the seizure,
which was made on January 10, 1900, on College Avenue, which is the
same as the residence of the defendant. The residence was known to the
United States Marshal at the time of the seizure, which was made on
January 10, 1900, on College Avenue, which is the same as the
residence of the defendant. The residence was known to the United
States Marshal at the time of the seizure, which was made on January
10, 1900, on College Avenue, which is the same as the residence of
the defendant. The residence was known to the United States Marshal
at the time of the seizure, which was made on January 10, 1900, on
College Avenue, which is the same as the residence of the defendant.
The residence was known to the United States Marshal at the time of
the seizure, which was made on January 10, 1900, on College Avenue,
which is the same as the residence of the defendant. The residence
was known to the United States Marshal at the time of the seizure,
which was made on January 10, 1900, on College Avenue, which is the
same as the residence of the defendant. The residence was known to the
United States Marshal at the time of the seizure, which was made on
January 10, 1900, on College Avenue, which is the same as the
residence of the defendant. The residence was known to the United
States Marshal at the time of the seizure, which was made on January
10, 1900, on College Avenue, which is the same as the residence of
the defendant. The residence was known to the United States Marshal
at the time of the seizure, which was made on January 10, 1900, on
College Avenue, which is the same as the residence of the defendant.

he saw the plaintiff start across the street, going west; that plaintiff was facing the witness and was about 150 feet south of 38th street; that the street car was then at 38th street and defendant's truck was about 150 feet north of plaintiff; that plaintiff was in the north bound tracks and stepped west, hesitated and looked toward the north; that defendant's truck at this time crossed over in front of the witness' auto onto the south bound track, thus obscuring the witness' view; the witness at this time was going at an average speed; the witness slowed down and when the truck was about thirty feet in front of him it started to swerve, and after it had gone about forty or fifty feet the witness saw something drop off the front of the truck, and as the witness neared the place he saw that it was a body; the person was hit opposite a shanty on the west side of the street and after the accident was lying about fifty feet south of where he was hit.

Another witness, Welhofen, testified he was on a north bound street car coming north from 39th street; that he saw the truck strike the man about 100 or 125 feet south of 38th street; that he saw the truck start to swerve in and out; that the truck stopped about 200 feet south of the man lying in the street; that the man was lying close to the west of the south bound street car tracks and was about 75 or 100 feet south of a shanty, which is about 100 or 125 feet south of 38th street; that the north bound street car had stopped opposite the shanty but was on its way to the north when the man was struck; that the truck was going at a lively gait and no horn was blown.

The driver of the truck, Leo Goldberg, testified that he was driving southeast on Cottage Grove avenue, straddling the west rail of the south bound street car tracks; that there was no traffic on the street either ahead of him or on either side of him except the north bound street car; he says there were no automobiles on either

He saw the plaintiff start across the street, which street; that
plaintiff was looking the witness and about the time he
18th street; that the street was the same as that street was
Tombert's track was about the first street of plaintiff; that
left was in the north second street and about that time, plaintiff
looked toward the right; that defendant's track at that time
over in front of the witness' main house the witness could see, that
about the witness' time; the witness at that time was looking at
an opposite street; the witness almost went down the street and
about thirty feet in front of him is located a house, that after
it had gone about forty or fifty feet he almost saw something
drop off the front of his house, and as the witness looked the witness
he saw that it was a baby; the witness saw his opposite a house
the rear side of the street and after the accident was going about
thirty feet north of street he was hit.

Another witness, defendant, testified he was on a north street
almost an equal street from that street; that he saw the witness
about the time about 100 or 120 feet north of the street; that he
saw the track start to move in his car; that the witness stopped
about 200 feet north of the car and the witness; that the car was
lying close to the west of the north street and the witness was
about 75 or 100 feet north of a house, which is about 100 or 120
feet north of that street; that the north street street was
about opposite the house but was on the way to the north street
the car was struck; and the witness was going at a fairly fast rate
he was the witness.

The witness at that time, defendant, testified that he was
driving toward the north street street, defendant, the very first
of the north street street and the witness that street was on the north
the street almost at the end of the street and at the same time
he was about 100 feet north of the street; that he was about 100 feet

side of him as he passed 38th street; that he was not going faster than fifteen miles an hour; that just as he got to the south end of the street car "a man darted out - he darted from the east to the west, towards the barn"; that the man was approximately five feet behind the end of the north bound street car; the witness averted his truck to the right but the man was struck by the left-hand side of the front of the truck.

The questions of fact presented were peculiarly for the jury to determine. Libby, McNeill & Libby v. Cook, 222 Ill. 906. In view of Keating's testimony that defendant's truck passed him and cut in front of him at 38th street, the jury could reasonably doubt Goldberg's testimony that there were no other automobiles on the street, and could draw the conclusion that Goldberg failed to keep a proper lookout for other vehicles, or pedestrians. Goldberg testified that he had been driving this same route for about eight years and knew that street cars stood there where street car men got off and went to work. The jury also could accept the testimony of plaintiff's witnesses that the street car was approximately 150 feet north of plaintiff when he was struck, and that he had not "darted" out about five feet from the end of the street car. The jury could also conclude that defendant's truck was driven at a rapid rate of speed as it passed Keating's auto, which Keating said was going at an average rate of speed. We are unable to say that the finding of the jury as to the negligence of defendant is manifestly against the weight of the evidence.

The question of contributory negligence of the deceased was one of fact to be determined by the jury. Kelly v. Chicago City Ry. Co., 223 Ill. 640. The evidence indicated that the deceased looked northward in the direction of the southbound traffic; that at this time the defendant's truck was approximately

side of him as he passed that street; that he saw him there
 then fifteen miles in front; that he saw him there and
 of the street was "a new kind of car" - he called it the "new
 the way, towards the town; that the car was approximately
 first passed him and at the same time he saw the car
 towards the town as he saw it at the time of the
 left-hand side of the front of the car.

The occurrence of these events were recorded in the
 day to determine. The first of these events was the
 to the left of the car, the second was the car passing him
 and not in front of him as the street, the car was
 about fifteen feet away from the car when it was
 on the street, and that from the car when it was
 to keep a proper lookout for other vehicles, or pedestrians.
 following behind him he had been driving this same car for
 about eight years and that he was then about thirty years
 street car and all the time he was on the street.
 street, the location of the car was the same as the street
 was approximately the same as the location of the car when
 and that he had the "new" car about five years and was at
 the street car. The car was then about the same as
 front was driven at a rate of speed as it passed the car
 side, which he was going at an average rate of speed.
 to see him as he was then the location of the car as he was
 ground of the street in which he was driving at the time.

The location of the car was the same as the location
 was not at that time as determined by the fact. The car
 first of these events was the car passing him and not in
 street passed him in the street at the same time as the
 the car as he was then the location of the car as he was

150 feet to the north. Deceased might reasonably, in the exercise of due caution, conclude that he could safely cross the street. There is evidence that as defendant's truck neared deceased it commenced to swerve toward the right and struck the man as he was about at the west rail of the south bound track.

The entire circumstances and facts were for the jury to consider. We could reverse only if it was clear that the verdict was against the manifest weight of the evidence. We cannot see our way so to conclude, and the judgment is therefore affirmed.

AFFIRMED.

Katchett and O'Connor, JJ., concur.

The first of the points mentioned above is the question
of the position of the line of the coast. It is
There is evidence that the position of the coast is
concerned to the point of the coast. It is
about 10 miles from the coast. It is
The entire circumference of the coast is
considered. It is said that the coast is
was against the position of the coast. It is
can say so to the coast, and the position is
position.

Information and documents, etc., etc.

38414

ANNIE HUGHES,
Appellee,

vs.

HOWARD J. ZIGLER,
Appellant.

APPEAL FROM SUMMER COURT
OF COOL COUNTY.

282 I.A. 638

MR. PRESIDING JUSTICE MESURELY
DELIVERED THE OPINION OF THE COURT.

About eight o'clock in the evening of October 30, 1934, plaintiff, then ^{six} ~~sixty~~ years of age, started to cross Sheridan road from the west to the east side when she was struck by a north bound automobile owned and operated by defendant; she brought suit for the injuries received and upon trial by the court had a finding and judgment for \$5000, which defendant seeks to have reversed.

The accident happened at the intersection of Sheridan road, which runs north, and Jarvis avenue, which runs east and west; it was misty weather and visibility was poor; Sheridan road is about sixty feet in width; the street lights at the intersection were lighted; as plaintiff reached the northwest corner of the intersection, according to her witnesses, the green light was toward the west for east and west traffic; plaintiff started to cross Sheridan road but before she reached the northeast corner the lights changed and she was struck when about four feet from the east curb - one witness says ten feet.

Defendant's car on Sheridan road was approaching the street intersection from the south at about 35 miles an hour; its speed did not slacken as it neared the intersection; he and one other witness going north in an automobile say the green light was toward them. Evidently by the time defendant reached the intersection and before plaintiff had gotten entirely across Sheridan road, the lights for north bound traffic changed from red to green and he proceeded without stopping or slackening speed.

Defendant says that as he started to cross Jarvis avenue he did not see anything; that he saw plaintiff just as she was struck by the front right hand of the car; that he was looking straight ahead and did not see her until she was a few feet in front of his car. Although defendant's testimony would indicate that plaintiff was north of the street intersection when she was struck, there was other evidence that she was walking on the north cross-walk. Defendant testified that had he seen plaintiff in time he could have passed either to her right or left and avoided hitting her.

Under these circumstances the alleged contributory negligence of plaintiff and defendant's negligence were for the trial Judge to determine. The court could properly conclude that plaintiff, in the exercise of due care, started to cross Sheridan road when the green light was in her favor, expecting she would have ample time to cross without interference from the north bound traffic. The court also was justified in concluding that defendant, in proceeding across the intersection just as the light changed without slackening speed and failing to look out for possible pedestrians crossing Sheridan road, was negligent.

Defendant's counsel first invoke some of the decisions from other districts of the Appellate court of this State which hold that where the complaint charges both general negligence and wilful and wanton negligence, a general verdict cannot stand. We have repeatedly said that this is not the law. Price v. Bailey, 265 Ill. App. 350, (specially concurring opinion by Mr. Justice O'Connor). More recent cases are Hawkins v. McClun, 266 Ill. App. 601; Provenzano v. Illinois Cent. R. R. Co., 272 Ill. App. 475; Fickler v. Seekamp, 274 Ill. App. 310, and Foale v. Linsky, 279 Ill. App. 58.

Moreover, it is doubtful whether the declaration properly charges wilful and wanton operation of the automobile. The declaration is predicated upon the exercise of due care and caution by

10-
The following information was obtained from the records of the
Department of the Interior, Bureau of Land Management, and the
Bureau of Reclamation, and is being furnished to you for your
information. It is not intended to be used as evidence in any
court of law, and it is not to be relied upon for any purpose
other than that for which it was furnished. It is the property
of the Department of the Interior and is loaned to you for your
information only. It is to be returned to the Department of the
Interior when you no longer need it. It is not to be
reproduced or distributed in any form without the written
consent of the Department of the Interior.

[illegible][illegible]

There is no evidence that the above information was obtained from any source other than the above mentioned sources.

the plaintiff, and it is alleged that defendant disregarded his duty to exercise ordinary care and caution in the operation of the vehicle. The only allegation of wilful and wanton operation is in a subdivision of one of the paragraphs of one of the counts of the declaration. The case was not tried upon the theory of wilful and wanton conduct and there was no evidence to sustain such a charge.

We must admonish both counsel to read carefully Rule 7 of this court. Briefs which in the statement of facts merely give, *seriatim*, the testimony of all the witnesses are not helpful. In cases of the present kind the brief should give in the first instance a concise picture of the surroundings and occurrence, the directions in which the streets run and the respective parties were going, and the time. These should be accurately stated. Defendant's brief especially failed in this respect.

The trial court saw the witnesses and heard them testify. We cannot say that its conclusion was manifestly against the weight of the evidence, and the judgment is therefore affirmed.

AFFIRMED.

Matchett and O'Connor, JJ., concur.

the plaintiff, but it is alleged that defendant's conduct is such

to constitute ordinary care and attention in the exercise of his
 duties. The only allegation of fault on the part of the plaintiff is in
 a subdivision of one of the paragraphs of one of the counts in the
 declaration. The case was not tried on the theory it was tried on.
 Various questions and issues were so submitted to the jury as to require
 the jury to consider each count on two separate occasions.

With regard to the counts in the declaration of a tortiously
 inflicted, the defendant is not responsible for the injury. The
 counts of the declaration and the facts would give rise to the first
 counts a certain liability of the defendant and defendant, the
 allegations in which the counts are not the defendant's conduct was
 alleged, and the facts. These would be sufficient to establish
 the first count separately in the counts.

The first count was the defendant's conduct and the facts.
 The counts are that the defendant was negligently liable for the injury
 to the plaintiff, and the defendant is negligent.

WITNESSES

Witnesses and defendant, etc., etc.

38465

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

vs.

SIDNEY LEWIS,
Plaintiff in Error.

88 7
JUDGE TO MUNICIPAL COURT

OF CHICAGO.

282 I.A. 638³

MR. PRESIDING JUSTICE MCSURELY
DELIVERED THE OPINION OF THE COURT.

Defendant was charged with practicing law without a license contrary to the statute, and upon trial by the court he was found guilty, sentenced to serve ten days in Cook county jail and fined \$50. He seeks a reversal, his principal point being that the record fails to show beyond a reasonable doubt that he is guilty, and with this we are in accord.

Defendant was a law clerk in the firm of McDonnell & McDonnell, attorneys at law practicing in Cook county, connected with that office for approximately ten years; his activities were solely as a law clerk acting for his employers.

The only complaining witness was Agnes Rozak, whose son was charged with a misdemeanor. She testified she met defendant in the Criminal court building October 12, 1933, and gave him \$50 "to fix the bond, because we have a bond for my boy." In answer to a question she replied, "Yes, I hire him like a lawyer." On cross-examination she stated she met defendant November 23, 1932, at the police building, 11th and State streets, when she gave him \$50 and later additional sums to represent her son in a criminal matter; that defendant was the lawyer who appeared in the police court for her son when he was discharged; that after his discharge he was re-arrested, and in the felony branch of the Municipal court charged with assault with intent to kill. Apparently this charge was tried, resulting in the discharge of the son.

At the time of the second charge Mrs. Rozak gave a bond,

THE STATE OF NEW YORK
IN SENATE
JANUARY 18, 1911.

REPORT

OF THE
COMMISSIONERS OF THE LAND OFFICE
IN RESPONSE TO A RESOLUTION
PASSED BY THE SENATE
JANUARY 18, 1911.

1911

ALBANY: PUBLISHED BY THE
UNIVERSITY OF THE STATE OF NEW YORK
1911

The following is a list of the names of the persons who have been appointed to the various commissions created by the Senate in the year 1911. The names are given in alphabetical order of the names of the commissions. The names of the persons who have been appointed to the commissions are given in parentheses after the names of the commissions. The names of the persons who have been appointed to the commissions are given in parentheses after the names of the commissions.

The following is a list of the names of the persons who have been appointed to the various commissions created by the Senate in the year 1911. The names are given in alphabetical order of the names of the commissions. The names of the persons who have been appointed to the commissions are given in parentheses after the names of the commissions. The names of the persons who have been appointed to the commissions are given in parentheses after the names of the commissions.

which defendant signed as surety. In this bond, executed March 13, 1933, defendant's occupation is given as "law clerk - McDonnell & McDonnell." Mrs. Rozak was asked whether she did not then know that defendant was acting as a law clerk for McDonnell & McDonnell, but she gave an evasive answer. She repeatedly stated that she did not know Frank McDonnell and that he did not represent her son at any time. Yet other witnesses testified that Frank McDonnell represented Edward Rozak in the trial of both cases. Milo Swiercz, complaining witness against Edward Rozak, testified that he appeared against Rozak in both trials; that he saw Agnes Rozak and the rest of her family present at those times; that the defendant, Lewis, did not appear to be acting as a lawyer in either of these cases but as law clerk for Mr. McDonnell, and that Frank McDonnell appeared both in the felony court and in the Stock Yards court.

The testimony of Mrs. Rozak is very confusing. Her chief complaint seems to be as to the amount of money she paid the lawyers to represent her son. Frank McDonnell had represented a brother of a Mrs. Rominsky, who was a friend of Mrs. Rozak; when Edward Rozak was first arrested Mrs. Rominsky advised her to employ McDonnell & McDonnell. Defendant testified that he met Mrs. Rominsky and Mrs. Rozak; that they told him there was a warrant out for Edward Rozak; that he asked Mrs. Rozak if she wanted McDonnell & McDonnell to represent her son, and she replied that she did; that she had \$50 with her; defendant then called the office and told Simon McDonnell about the case and received instructions to take the \$50, give a receipt, have her son surrender, and that he, Simon McDonnell, would be at the Stock Yards court when the case was called. Approximately \$200 was paid by Mrs. Rozak to McDonnell & McDonnell, and both Simon and Frank McDonnell appeared in the Stock Yards court and in the felony court. When Edward Rozak was held over to the grand jury and indicted, Frank McDonnell filed his appearance

[illegible]

as his attorney. The only money defendant personally received from Mrs. Rosak was \$50 when he first met her in November, 1933; he accepted this on behalf of his employers and immediately turned it over to them. Defendant denied that he ever represented himself to be a lawyer or that Mrs. Rosak ever saw him in October, 1933; he testified that he was employed by McDonnell & McDonnell at a salary of \$35 a week and had worked for various lawyers since he was fourteen years old.

It was stipulated that the firm of McDonnell & McDonnell were the attorneys of record in the different cases and in the different courts where Edward Rosak was prosecuted. A number of witnesses connected with the courts of Cook county testified to the effect that they had known defendant for many years and that he was a law clerk; that he performed the usual duties of a law clerk assisting his employers, sometimes seeking continuance of cases when his employers were occupied elsewhere, and sometimes as an investigator for Frank McDonnell. There were also a number of character witnesses who testified to the good reputation of defendant for honesty and integrity. The brief filed on behalf of the People seems to concede the weakness of the People's case. No attempt is made to controvert any of the statements of facts or testimony made in defendant's brief.

We hold the evidence failed to establish the charge that defendant was practicing law, and the judgment is therefore reversed.

REVERSED.

Matchett and O'Connor, JJ., concur.

as his attorney. The only money received personally towards this
the, money was \$25 when he lived and he was paid \$1000 for his
regard this on behalf of his wife and immediate family in
over to them. Defendant denied that he ever represented a client in
he a lawyer at that time. Rosen ever had him in prison, 1931, he
testified that he was employed by defendant's attorney at a salary
of \$125 a week and had worked for various lawyers since he was twenty
seven years old.

[illegible]

...the fact that the ...

...the

[illegible]

38502

THE CITY OF CHICAGO,
Appellee,

vs.

MATERIAL SERVICE CORPORATION,
Appellant.

89
7
APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

282 I.A. 638⁴

MR. PRESIDING JUSTICE McSURELY
DELIVERED THE OPINION OF THE COURT.

Upon trial by the court defendant was found guilty of delivering a short-weight load of coal in violation of section 2953 of an ordinance of the City of Chicago, and fined \$50.

It appeals, saying first that it bought the coal from the Garden City Sand Company, which weighed and delivered the coal, that it was an independent contractor and is responsible for any errors in that connection.

Defendant apparently is in the business of supplying commodities to the public; it received an order from B. B. Sweitzer, county treasurer, receiver, for 30,300 pounds of coal to be delivered to 7735 Hastings avenue; the defendant has no coal in storage; it purchased the amount of coal so ordered from the Garden City Sand Company, to be delivered from the sand company's yard to Sweitzer, receiver, at the place specified; the coal was weighed, loaded and billed in the sand company's yard by its employees; the truck carrying the load bore the name of Garden City Sand Company; the driver, Harold Reinhart, was an employee of the sand company and had been working for this company prior to this occasion for three years; he received his instructions for delivery of the load from Mr. Herrick, president of the Garden City Sand company; the delivery ticket to be delivered to Sweitzer was made out on the billhead of defendant by an employee of the sand company.

THE CITY OF CHICAGO
OFFICE OF THE COMMISSIONER OF PUBLIC WORKS

10

ALABAMA POWER CORPORATION
CHICAGO, ILLINOIS

282 I.A. 688

ALABAMA POWER CORPORATION
CHICAGO, ILLINOIS

When this by the said Alabama Power Corporation was filed with the following a check-book and it was in violation of the terms of an agreement of the City of Chicago, and that said

It appears, being that the said Alabama Power Corporation, which was filed with the City of Chicago, which was filed with the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

Delivered especially in the violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

It was in violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

It was in violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

It was in violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

It was in violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

It was in violation of the terms of an agreement of the City of Chicago, and it was in violation of the terms of an agreement of the City of Chicago, and that said

Ill. 622, involved a teamster engaged in hauling cinders from a foundry and the question was whether he was an independent contractor or an employee of the foundry; the court noted that he owned and maintained his own team and wagon, was paid by the load, did hauling for others, had no fixed hours for services in the foundry company, employing assistants whenever necessary. It was held that he was an independent contractor, the court defining an independent contractor "as one who renders service in the course of an occupation and represents the will of the person for whom the work is done only with respect to the result and not the means by which that result is accomplished." If the person for whom the service is rendered retains the right to control the details of the work and the method or manner of its performance, the relation of employer and employee exists.

Hartley v. Red Ball Transit Co., 344 Ill. 534. See also Fraser v. Wadsworth-Morland Co., 168 Ill. 814, Trust v. Chicago Motor Club, 276 Ill. App. 239, and Hempstead v. Toledo Scale Co., 270 Ill. App. 299.

Plaintiff says these cases involve tort actions and are not applicable to a case seeking to impose a penalty for the violation of an ordinance which is intended to protect purchasers of coal by making sellers responsible no matter in what manner the coal should be delivered, whether by an independent contractor or a servant. We find no decided cases supporting this distinction. On the contrary, there are cases applying the rule to the violation of an ordinance. In Williamsport v. Williamsport Water Co., 7 Penn. Dist. Rep. 306, a street was opened without a permit, as required by ordinance; action was instituted to recover a penalty; it was shown that the defendant had contracted with one Coons to open and excavate the street; the trial court assessed a penalty upon the defendant, but upon appeal this judgment was reversed upon the ground that this excavation was made by the independent contractors and that the defendant had no control over the contractors or their employees, and

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 361–367

Copyright © 2003 by John Wiley & Sons, Inc.

James Earl Ray, alias George Jackson, was arrested and taken to the hospital as a

and found that the model with the best fit was the one with the highest R^2 value. The model with the highest R^2 value was the one with the highest R^2 value.

For details, see the "Notes" section of the report.

Approved and forwarded for signature of the President of the Board of Directors: _____

7-10-1950 - 10-10-1950 - 11-10-1950 - 12-10-1950 - 1-11-1950 - 2-11-1950 - 3-11-1950 - 4-11-1950 - 5-11-1950 - 6-11-1950 - 7-11-1950 - 8-11-1950 - 9-11-1950 - 10-11-1950 - 11-11-1950 - 12-11-1950 - 1-12-1950 - 2-12-1950 - 3-12-1950 - 4-12-1950 - 5-12-1950 - 6-12-1950 - 7-12-1950 - 8-12-1950 - 9-12-1950 - 10-12-1950 - 11-12-1950 - 12-12-1950 - 1-1-1951 - 2-1-1951 - 3-1-1951 - 4-1-1951 - 5-1-1951 - 6-1-1951 - 7-1-1951 - 8-1-1951 - 9-1-1951 - 10-1-1951 - 11-1-1951 - 12-1-1951 - 1-2-1951 - 2-2-1951 - 3-2-1951 - 4-2-1951 - 5-2-1951 - 6-2-1951 - 7-2-1951 - 8-2-1951 - 9-2-1951 - 10-2-1951 - 11-2-1951 - 12-2-1951 - 1-3-1951 - 2-3-1951 - 3-3-1951 - 4-3-1951 - 5-3-1951 - 6-3-1951 - 7-3-1951 - 8-3-1951 - 9-3-1951 - 10-3-1951 - 11-3-1951 - 12-3-1951 - 1-4-1951 - 2-4-1951 - 3-4-1951 - 4-4-1951 - 5-4-1951 - 6-4-1951 - 7-4-1951 - 8-4-1951 - 9-4-1951 - 10-4-1951 - 11-4-1951 - 12-4-1951 - 1-5-1951 - 2-5-1951 - 3-5-1951 - 4-5-1951 - 5-5-1951 - 6-5-1951 - 7-5-1951 - 8-5-1951 - 9-5-1951 - 10-5-1951 - 11-5-1951 - 12-5-1951 - 1-6-1951 - 2-6-1951 - 3-6-1951 - 4-6-1951 - 5-6-1951 - 6-6-1951 - 7-6-1951 - 8-6-1951 - 9-6-1951 - 10-6-1951 - 11-6-1951 - 12-6-1951 - 1-7-1951 - 2-7-1951 - 3-7-1951 - 4-7-1951 - 5-7-1951 - 6-7-1951 - 7-7-1951 - 8-7-1951 - 9-7-1951 - 10-7-1951 - 11-7-1951 - 12-7-1951 - 1-8-1951 - 2-8-1951 - 3-8-1951 - 4-8-1951 - 5-8-1951 - 6-8-1951 - 7-8-1951 - 8-8-1951 - 9-8-1951 - 10-8-1951 - 11-8-1951 - 12-8-1951 - 1-9-1951 - 2-9-1951 - 3-9-1951 - 4-9-1951 - 5-9-1951 - 6-9-1951 - 7-9-1951 - 8-9-1951 - 9-9-1951 - 10-9-1951 - 11-9-1951 - 12-9-1951 - 1-10-1951 - 2-10-1951 - 3-10-1951 - 4-10-1951 - 5-10-1951 - 6-10-1951 - 7-10-1951 - 8-10-1951 - 9-10-1951 - 10-10-1951 - 11-10-1951 - 12-10-1951 - 1-11-1951 - 2-11-1951 - 3-11-1951 - 4-11-1951 - 5-11-1951 - 6-11-1951 - 7-11-1951 - 8-11-1951 - 9-11-1951 - 10-11-1951 - 11-11-1951 - 12-11-1951 - 1-12-1951 - 2-12-1951 - 3-12-1951 - 4-12-1951 - 5-12-1951 - 6-12-1951 - 7-12-1951 - 8-12-1951 - 9-12-1951 - 10-12-1951 - 11-12-1951 - 12-12-1951 - 1-1-1952 - 2-1-1952 - 3-1-1952 - 4-1-1952 - 5-1-1952 - 6-1-1952 - 7-1-1952 - 8-1-1952 - 9-1-1952 - 10-1-1952 - 11-1-1952 - 12-1-1952 - 1-2-1952 - 2-2-1952 - 3-2-1952 - 4-2-1952 - 5-2-1952 - 6-2-1952 - 7-2-1952 - 8-2-1952 - 9-2-1952 - 10-2-1952 - 11-2-1952 - 12-2-1952 - 1-3-1952 - 2-3-1952 - 3-3-1952 - 4-3-1952 - 5-3-1952 - 6-3-1952 - 7-3-1952 - 8-3-1952 - 9-3-1952 - 10-3-1952 - 11-3-1952 - 12-3-1952 - 1-4-1952 - 2-4-1952 - 3-4-1952 - 4-4-1952 - 5-4-1952 - 6-4-1952 - 7-4-1952 - 8-4-1952 - 9-4-1952 - 10-4-1952 - 11-4-1952 - 12-4-1952 - 1-5-1952 - 2-5-1952 - 3-5-1952 - 4-5-1952 - 5-5-1952 - 6-5-1952 - 7-5-1952 - 8-5-1952 - 9-5-1952 - 10-5-1952 - 11-5-1952 - 12-5-1952 - 1-6-1952 - 2-6-1952 - 3-6-1952 - 4-6-1952 - 5-6-1952 - 6-6-1952 - 7-6-1952 - 8-6-1952 - 9-6-1952 - 10-6-1952 - 11-6-1952 - 12-6-1952 - 1-7-1952 - 2-7-1952 - 3-7-1952 - 4-7-1952 - 5-7-1952 - 6-7-1952 - 7-7-1952 - 8-7-1952 - 9-7-1952 - 10-7-1952 - 11-7-1952 - 12-7-1952 - 1-8-1952 - 2-8-1952 - 3-8-1952 - 4-8-1952 - 5-8-1952 - 6-8-1952 - 7-8-1952 - 8-8-1952 - 9-8-1952 - 10-8-1952 - 11-8-1952 - 12-8-1952 - 1-9-1952 - 2-9-1952 - 3-9-1952 - 4-9-1952 - 5-9-1952 - 6-9-1952 - 7-9-1952 - 8-9-1952 - 9-9-1952 - 10-9-1952 - 11-9-1952 - 12-9-1952 - 1-10-1952 - 2-10-1952 - 3-10-1952 - 4-10-1952 - 5-10-1952 - 6-10-1952 - 7-10-1952 - 8-10-1952 - 9-10-1952 - 10-10-1952 - 11-10-1952 - 12-10-1952 - 1-11-1952 - 2-11-1952 - 3-11-1952 - 4-11-1952 - 5-11-1952 - 6-11-1952 - 7-11-1952 - 8-11-1952 - 9-11-1952 - 10-11-1952 - 11-11-1952 - 12-11-1952 - 1-12-1952 - 2-12-1952 - 3-12-1952 - 4-12-1952 - 5-12-1952 - 6-12-1952 - 7-12-1952 - 8-12-1952 - 9-12-1952 - 10-12-1952 - 11-12-1952 - 12-12-1952 - 1-1-1953 - 2-1-1953 - 3-1-1953 - 4-1-1953 - 5-1-1953 - 6-1-1953 - 7-1-1953 - 8-1-1953 - 9-1-1953 - 10-1-1953 - 11-1-1953 - 12-1-1953 - 1-2-1953 - 2-2-1953 - 3-2-1953 - 4-2-1953 - 5-2-1953 - 6-2-1953 - 7-2-1953 - 8-2-1953 - 9-2-1953 - 10-2-1953 - 11-2-1953 - 12-2-1953 - 1-3-1953 - 2-3-1953 - 3-3-1953 - 4-3-1953 - 5-3-1953 - 6-3-1953 - 7-3-1953 - 8-3-1953 - 9-3-1953 - 10-3-1953 - 11-3-1953 - 12-3-1953 - 1-4-1953 - 2-4-1953 - 3-4-1953 - 4-4-1953 - 5-4-1953 - 6-4-1953 - 7-4-1953 - 8-4-1953 - 9-4-1953 - 10-4-1953 - 11-4-1953 - 12-4-1953 - 1-5-1953 - 2-5-1953 - 3-5-1953 - 4-5-1953 - 5-5-1953 - 6-5-1953 - 7-5-1953 - 8-5-1953 - 9-5-1953 - 10-5-1953 - 11-5-1953 - 12-5-1953 - 1-6-1953 - 2-6-1953 - 3-6-1953 - 4-6-1953 - 5-6-1953 - 6-6-1953 - 7-6-1953 - 8-6-1953 - 9-6-1953 - 10-6-1953 - 11-6-1953 - 12-6-1953 - 1-7-1953 - 2-7-1

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

THESE RESULTS WERE REPRODUCED BY OTHER INVESTIGATORS.

... ..

Copyright © 2004 by John Wiley & Sons, Inc. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as may be permitted in writing by John Wiley & Sons, Inc. This publication is registered at the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923.

any time a person is being searched. The individual being searched must be informed of all his rights.

[illegible][illegible]

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

doi:10.1017/S002229240000209 Printed in the United Kingdom

...the

1994, 1995). The authors conclude that the results are consistent with the hypothesis that the

1. The first group of authors (e.g., [1, 2]) considers the problem of the stability of the motion of a system of particles in the field of a central body. The results of the calculations show that the system is stable for a certain range of initial conditions. The results of the calculations show that the system is stable for a certain range of initial conditions.

that the city should have recourse against the independent contractors to enforce the penalty. City of Buffalo v. Clement, 19 N.Y. 2. 846, involved an action for the violation of an ordinance prohibiting the placing of any materials in the streets; defendant Clement had contracted with one Diehl for the construction of two houses, who sublet the contract for the excavations to a subcontractor who deposited stone and other materials in the street. The lower court held defendant Clement not guilty. The Supreme court affirmed this, saying that as a penalty was attached for the violation of an ordinance, "it must be limited in its operation to such matters and persons as fairly come within its lines, and can not be extended by implication or construction." It was held that as the obstruction was caused by an independent contractor, defendant Clement could not be penalized. To the same effect is City of Elmira v. Johnson, 136 N.Y.S. 471.

It should be noted that in the instant case the defendant bought from the Garden City Sand Company 20,300 pounds of coal and was charged for this amount, and likewise billed Sweitzer, receiver, for this amount of coal, so that the only one who could profit by short weight was the Garden City Sand Company. We are of the opinion the defendant cannot be penalized for a violation, if any, of the ordinance in question by the Garden City Sand Company, from which the defendant bought the coal.

There are certain facts which tend to establish that the short weight in the load of coal delivered to Sweitzer came about through an honest mistake. Defendant ordered from the Sand company 20,300 pounds of East Kentucky Steker screenings coal, to be delivered; on the same date the Sand company undertook to fill an order from Glen C. Crawford, receiver of the Randolph Hotel company, for 18,700 pounds of New Menarch coal; each of these orders were weighed by Merrick, president of the Sand company, and loaded respectively

that the ship would have remained within the territorial waters.

There is evidence that the ship was in the territorial waters of the United States.

It was, however, in violation of the provisions of the Act of March 3, 1899.

During the trial of the vessel in the district court, the following facts were presented:

Witnesses testified that the ship was in the territorial waters of the United States.

However, the vessel was not in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

The facts were fully stated by the witnesses and the court.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

It was further stated that the vessel was in the territorial waters of the United States.

Witnesses testified that the vessel was in the territorial waters of the United States.

in the Sand company's trucks in its yard; the president gave the tickets to the drivers with oral instructions as to the place of delivery; through a misunderstanding Schmitt, the driver, delivered the 18,700 pounds of New Monarch coal intended for Crawford to the Sweitzer receivership property, and the 22,500 pounds of screenings intended for Sweitzer was delivered to the Crawford receivership property. The trial court indicated that he was of the opinion there had been a mistake, but held that the people must be protected in honest weights although there was an unintentional mistake.

Newark v. East Side Coal Co., 77 N.J.L. 732, involved facts much the same as those in the instant case. There a load of coal intended for one purchaser was delivered to another purchaser who had ordered a larger amount, the driver having confused the orders; in the trial court the defendant was found guilty of giving short weight; this was affirmed by the Appellate court, but the higher court reversed the judgment on the ground that, although there was a contract to sell and deliver to the purchaser a ton of coal, yet through an honest mistake there was delivered to her a lesser amount, which was intended for another person. The opinion said that to render a vendor of coal liable under the act for the protection of purchasers of coal, "it must appear that the delivery was intended to be in execution of the sale to the person to whom delivery is attempted, and when it appears, as it does in this case, that a sale to one person is attempted to be completed by the delivery of another person's order, resulting from an honest mistake, the act does not apply." The reasoning in this case is persuasive and might be presented with effectiveness if the action were brought against the Garden City Sand company. However, as to this we express no conclusion, as we held that defendant cannot, in any event, be penalized for any conduct of the Garden City Sand company, an independent contractor, with respect to the delivery of the coal in question.

For the reason indicated the judgment is reversed. REVERSED.
 Hatchett and O'Connor, JJ., concur.

[illegible]

with the same as I was in the former case. There is no doubt
intended for me because we believed at various points and
and entered a larger amount, the first being - which the latter
in the first half was delivered and found daily of living words
which; this was followed by the second half, and the latter
must represent the balance on the first half, although there was
a contract of all, and delivery in two parts, one in 1901, and
second, on second delivery there was delivered in 1902 a further
amount, which was intended for another person. But according to
that so under a contract of such kind there must be the con-
dition of payment at once, "I will agree that the delivery
was intended to be in satisfaction of the debt to the extent of value
delivery is attempted, and when it appears, or if there is any sale,
that a sale of the return is intended or is completed by the de-
livery of another person's goods, resulting from an actual mistake,
the law does not apply." The reason why in this case is particularly
not right be provided with fulfillment of the return with respect
against the return with respect, however, as to how he was
be considered, as he said that delivery made, in my view, be

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05-10-2011 BY 60322 UCBAW

39297

PAULINE DE WAAL ORSI,
Plaintiff in Error,

vs.

VICTOR ORSI,
Defendant in Error.

ERROR TO SUPREMACY COURT
OF COOK COUNTY.

282 I.A. 639¹

MR. JUSTICE MATHOMTT DELIVERED THE OPINION OF THE COURT.

This record discloses a bill filed by Pauline De Waal Orsi on January 23, 1933, praying a divorce from her husband, Victor Orsi, on the ground that he has been guilty of extreme and repeated cruelty. He appeared and answered denying the charges. March 25, 1933, Victor Orsi filed a cross bill charging that complainant was guilty of extreme and repeated cruelty and praying for a decree of divorce. May 8th Victor Orsi filed a petition praying for a change of venue from Judges Sabath, Schwaba, Sullivan and David on the ground that these Judges were prejudiced against him. The order was entered granting the change, and in due course the cause was assigned to Judge Allegretti.

May 24, 1933, complainant filed her petition praying for a change of venue from Judge Allegretti. The petition was in due form and verified and averred that petitioner feared that she would not receive a fair and impartial trial if the cause was tried before Judge Allegretti for the reason that he was prejudiced against her. She also averred that knowledge of this prejudice first came to her on that day. On the same day that she filed this petition she filed an answer to the cross bill denying its charges. Thereafter her motion for a change of venue was denied. The issues arising on the cross bill were tried before Judge Allegretti, and June 8, 1933, a decree was entered in favor of Victor Orsi. To reverse that decree complainant has sued out this writ of error.

The husband has not appeared in this court to support the

1023 JUL 27 1961
FBI - NEW YORK

199

THE UNIVERSITY OF CHICAGO

029 AI 389

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

THIS PAGE IS BLANK IN ORIGINAL FILE. FILE'S CONTENTS BEGINS AT PAGE 2

[illegible][illegible]

decree, which manifestly must be reversed for the error of the court in denying the motion of complainant for a change of venue.

Richle Press v. Arturas, 131 Ill. App. 451; McGill v. Thomas Company, 273 Ill. App. 131; People v. Scott, 334 Ill. 127.

For the reason stated the decree is reversed and the cause remanded with directions to grant the change of venue.

REVERSED AND REMANDED WITH
DIRECTIONS.

McSurely, F. J., and O'Connor, J., concur.

in which the number of sides of the polygon is

bioRxiv preprint doi: <https://doi.org/10.1101/000000>; this version posted January 1, 2016. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted bioRxiv a license to display the preprint in perpetuity. It is made available under aCC-BY-NC-ND 4.0 International license.

[illegible][illegible]

... ..

Received 12 July 2006; accepted 12 July 2006

39507

CHICAGO TITLE AND TRUST COMPANY, a
Corporation, as Successor Trustee,
Plaintiff,

Appellee,

vs.

DAVE WEIGENBERG et al., Defendants.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

On Appeal of BERNARD RODIN and ROSE
RODIN, his Wife, Defendants,

Appellants.

282 I.A. 639

MR. JUSTICE MATHENY DELIVERED THE OPINION OF THE COURT.

This is an appeal by Bernard and Rose Rodin (owners of the equity by conveyance from Dave and Edith Weigenberg, makers of the trust deed) from a decree of foreclosure entered April 5, 1935. The cause was heard upon exceptions to the report of a master, the exceptions were overruled and a decree entered as recommended by the master.

The bill of complaint was filed by the Chicago Title and Trust Co., which was named in the trust deed as successor in trust to the Madison and Reddie State Bank in the event of the resignation, refusal or inability of the bank to act "when and while its services shall be required under any provision hereof," with the same rights, powers and duties vested or imposed on the trustee.

The bill of complaint set up the facts of the appointment of a receiver for the Madison & Reddie State Bank by the Auditor of Public Accounts, which appointment was confirmed by the Superior court, the resignation of this trust by the receiver for said bank, the refusal of the bank to act, and the written acceptance by the successor, Chicago Title and Trust Co., of the duties of the trustee, all prior to the beginning of this suit.

Defendants Rodin answered the bill, neither admitting nor denying the facts alleged therein, but demanding strict proof.

RECEIVED
JAN 10 1934
U.S. DEPT. OF JUSTICE
WASHINGTON, D.C.

TO THE ATTORNEY GENERAL

FROM THE DIRECTOR OF THE BUREAU OF INVESTIGATION

RE: [Illegible]

1. [Illegible]

2. [Illegible]

3. [Illegible]

4. [Illegible]

5. [Illegible]

Section 8 of Article 10 of the trust deed provides:

"The Trustee may resign the trust hereby created and all further liability thereunder upon giving written notice of its resignation to the Mortgagor, by registered mail, at least thirty (30) days before such resignation shall take effect."

Defendants say that this provision of the trust deed was binding on the assignee of the parties; that when they were named as grantees in the deed, which conveyed the equity to them, they also became assignee (Lorramo v. Shedd, 135 Ill. 196; Law v. Citizens Bank of Northfield, 90 U. S. 325, 35 Minn. 411), and that since they had an interest in the mortgaged premises and were in privity with the original mortgagors, they became "mortgagors" within the meaning of this provision of the trust deed and were entitled to notice, and that without such notice to them the resignation could not become effective. They cite March v. Green, 79 Ill. 336; Scott v. District Court, 15 U. S. D. 330; Abraham v. Bell, 94 U. S. 799.

The real question in this respect is to ascertain the intention of the parties to the trust deed. The covenant as to notice was, it seems to us, purely personal between the original parties. It did not run with the land. Gibson v. Bolden, 115 Ill. 199; Fennell Savings & Loan Assoc. v. Brinkmeyer, 263 Ill. App. 391. The bill alleged (and the evidence tends to show) that the receiver gave notice to the original makers of the mortgage, and we think this was sufficient. At any rate, the receiver of the bank was not bound by this provision of the trust deed. He was bound by the terms of the statute under which he was appointed. (Illinois State Bar State, 1938, chap. 16a, sec. 11) although it is true his appointment did not ipso facto terminate the trusteeship. (Relafsky v. Johnson, 266 Ill. App. 391; Billon v. Elmore, 301 Ill. 356). The question of notice was one of fact (Irish v. Antioch College, 125 Ill. 474), and the holding of the trial court that notice was in fact given to the

Section 5 of Article II of the Texas Constitution:

"The Governor may receive and receive from the State Treasury and all other sources of revenue, and may pay out of the same, for the support of the Government, the salaries of the officers, and the expenses of the State."

Notwithstanding any other provision of this Constitution, the Governor

on the expiration of his term, shall not be eligible for re-election

to the office of Governor, but may be elected to the office of

other offices, and may be elected to the office of Governor

for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

1901.

The term "Governor" in this section is to be construed to mean

the person who is elected to the office of Governor, and who is elected

to the office of Governor, and who is elected to the office of Governor

for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

Governor for a term of four years, and may be re-elected to the office of

makers of the trust deed is justified by the evidence.

However, even if our conclusion were otherwise upon this point, the contention of defendant that the successor in trust was without authority to maintain the suit cannot prevail upon this record for two reasons. In the first place, the issue was not presented by the pleadings. The question of the capacity of plaintiff to sue could be raised only by plea in abatement under the former practice, Fischer v. Hilsfel, 172 Ill. 39, or by motion to dismiss under the Civil Practice act. There was no such motion nor any such defense averred in the answer. Illinois State Bar Assn. 1938, chap. 110, sec. 43. There is no such plea here. It is true that at the hearing of the exceptions defendants petitioned for leave to amend their pleadings in this respect; however, the prayer of the petition was properly denied as coming too late. Turkheim v. Birkley, 287 Ill. 434. In the second place, section 1 and section 2 of Article 11 of the trust deed, rather than section 3 of Article 10, are applicable. These provide, in substance, that in the event of the resignation or refusal of the bank to act, "or if otherwise unable to act as Trustee, when and while its services shall be required under any provision hereof, the Chicago Title & Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, " is hereby appointed First Successor in the Trust hereby created." Section 2 of the same act provides that "said Chicago Title & Trust Company " shall have the same title to said property, and the same rights, powers and duties as are hereby vested or imposed on the Trustee hereunder." Considering these provisions together, it would seem that Section 3 of Article 10 provides for a voluntary resignation by the trustee, while Sections 1 and 2 of Article 11 make provision for contingencies that might arise. Under Section 3 of Article 10 provision is made for notice to the mortgagors. So each provision is made under Sections 1 and 2 of

Approved: _____

1990-1991 and 1991-1992. The 1990-1991 season was the first year that the program was implemented.

What more should I know about the situation at the time I was there?

[illegible]

Approved by the President and the Council of the President of the United States

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

[illegible]

1991-1992

2008年1月1日，公司开始执行《企业会计准则》。

0-1000 9000 10000 11000 12000 13000 14000 15000 16000 17000 18000 19000 20000

[illegible][illegible]

[Faint, illegible text]

1. 1990-1991 2. 1991-1992 3. 1992-1993 4. 1993-1994 5. 1994-1995 6. 1995-1996 7. 1996-1997 8. 1997-1998 9. 1998-1999 10. 1999-2000 11. 2000-2001 12. 2001-2002 13. 2002-2003 14. 2003-2004 15. 2004-2005 16. 2005-2006 17. 2006-2007 18. 2007-2008 19. 2008-2009 20. 2009-2010 21. 2010-2011 22. 2011-2012 23. 2012-2013 24. 2013-2014 25. 2014-2015 26. 2015-2016 27. 2016-2017 28. 2017-2018 29. 2018-2019 30. 2019-2020 31. 2020-2021 32. 2021-2022 33. 2022-2023 34. 2023-2024 35. 2024-2025 36. 2025-2026 37. 2026-2027 38. 2027-2028 39. 2028-2029 40. 2029-2030 41. 2030-2031 42. 2031-2032 43. 2032-2033 44. 2033-2034 45. 2034-2035 46. 2035-2036 47. 2036-2037 48. 2037-2038 49. 2038-2039 50. 2039-2040 51. 2040-2041 52. 2041-2042 53. 2042-2043 54. 2043-2044 55. 2044-2045 56. 2045-2046 57. 2046-2047 58. 2047-2048 59. 2048-2049 60. 2049-2050 61. 2050-2051 62. 2051-2052 63. 2052-2053 64. 2053-2054 65. 2054-2055 66. 2055-2056 67. 2056-2057 68. 2057-2058 69. 2058-2059 70. 2059-2060 71. 2060-2061 72. 2061-2062 73. 2062-2063 74. 2063-2064 75. 2064-2065 76. 2065-2066 77. 2066-2067 78. 2067-2068 79. 2068-2069 80. 2069-2070 81. 2070-2071 82. 2071-2072 83. 2072-2073 84. 2073-2074 85. 2074-2075 86. 2075-2076 87. 2076-2077 88. 2077-2078 89. 2078-2079 90. 2079-2080 91. 2080-2081 92. 2081-2082 93. 2082-2083 94. 2083-2084 95. 2084-2085 96. 2085-2086 97. 2086-2087 98. 2087-2088 99. 2088-2089 100. 2089-2090 101. 2090-2091 102. 2091-2092 103. 2092-2093 104. 2093-2094 105. 2094-2095 106. 2095-2096 107. 2096-2097 108. 2097-2098 109. 2098-2099 110. 2099-2100 111. 2100-2101 112. 2101-2102 113. 2102-2103 114. 2103-2104 115. 2104-2105 116. 2105-2106 117. 2106-2107 118. 2107-2108 119. 2108-2109 120. 2109-2110 121. 2110-2111 122. 2111-2112 123. 2112-2113 124. 2113-2114 125. 2114-2115 126. 2115-2116 127. 2116-2117 128. 2117-2118 129. 2118-2119 130. 2119-2120 131. 2120-2121 132. 2121-2122 133. 2122-2123 134. 2123-2124 135. 2124-2125 136. 2125-2126 137. 2126-2127 138. 2127-2128 139. 2128-2129 140. 2129-2130 141. 2130-2131 142. 2131-2132 143. 2132-2133 144. 2133-2134 145. 2134-2135 146. 2135-2136 147. 2136-2137 148. 2137-2138 149. 2138-2139 150. 2139-2140 151. 2140-2141 152. 2141-2142 153. 2142-2143 154. 2143-2144 155. 2144-2145 156. 2145-2146 157. 2146-2147 158. 2147-2148 159. 2148-2149 160. 2149-2150 161. 2150-2151 162. 2151-2152 163. 2152-2153 164. 2153-2154 165. 2154-2155 166. 2155-2156 167. 2156-2157 168. 2157-2158 169. 2158-2159 170. 2159-2160 171. 2160-2161 172. 2161-2162 173. 2162-2163 174. 2163-2164 175. 2164-2165 176. 2165-2166 177. 2166-2167 178. 2167-2168 179. 2168-2169 180. 2169-2170 181. 2170-2171 182. 2171-2172 183. 2172-2173 184. 2173-2174 185. 2174-2175 186. 2175-2176 187. 2176-2177 188. 2177-2178 189. 2178-2179 190. 2179-2180 191. 2180-2181 192. 2181-2182 193. 2182-2183 194. 2183-2184 195. 2184-2185 196. 2185-2186 197. 2186-2187 198. 2187-2188 199. 2188-2189 200. 2189-2190 201. 2190-2191 202. 2191-2192 203. 2192-2193 204. 2193-2194 205. 2194-2195 206. 2195-2196 207. 2196-2197 208. 2197-2198 209. 2198-2199 210. 2199-2200 211. 2200-2201 212. 2201-2202 213. 2202-2203 214. 2203-2204 215. 2204-2205 216. 2205-2206 217. 2206-2207 218. 2207-2208 219. 2208-2209 220. 2209-2210 221. 2210-2211 222. 2211-2212 223. 2212-2213 224. 2213-2214 225. 2214-2215 226. 2215-2216 227. 2216-2217 228. 2217-2218 229. 2218-2219 230. 2219-2220 231. 2220-2221 232. 2221-2222 233. 2222-2223 234. 2223-2224 235. 2224-2225 236. 2225-2226 237. 2226-2227 238. 2227-2228 239. 2228-2229 240. 2229-2230 241. 2230-2231 242. 2231-2232 243. 2232-2233 244. 2233-2234 245. 2234-2235 246. 2235-2236 247. 2236-2237 248. 2237-2238 249. 2238-2239 250. 2239-2240 251. 2240-2241 252. 2241-2242 253. 2242-2243 254. 2243-2244 255. 2244-2245 256. 2245-2246 257. 2246-2247 258. 2247-2248 259. 2248-2249 260. 2249-2250 261. 2250-2251 262. 2251-2252 263. 2252-2253 264. 2253-2254 265. 2254-2255 266. 2255-2256 267. 2256-2257 268. 2257-2258 269. 2258-2259 270. 2259-2260 271. 2260-2261 272. 2261-2262 273. 2262-2263 274. 2263-2264 275. 2264-2265 276. 2265-2266 277. 2266-2267 278. 2267-2268 279. 2268-2269 280. 2269-2270 28

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

THE UNIVERSITY OF CHICAGO

[illegible]

2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

Fig. 10. *Ant. 11* of *Antennaria dioica* (left) and *Antennaria dioica* (right).

Article 11, which is, we think, applicable here.

The objections of defendants to this decree do not touch the merits of the case. The purely technical objections made can not prevail, for the reasons we have stated.

The decree is affirmed.

AFFIRMED.

McGuire, S. J., and O'Connor, J., concur.

...the

The

... ..

... ..

... ..

...

... ..

38369

ROY E. BISHOP and FRANCES BISHOP,
Appellees,

vs.

ARTHUR T. MCINTOSH,
Appellant.

APPEAL FROM MUNICIPAL COURT
OF CHICAGO.

282 I.A. 639³

MR. JUSTICE HATCHETT DELIVERED THE OPINION OF THE COURT.

In an action by plaintiffs to recover from defendant payments made by plaintiffs under the terms of a written contract (whereby defendant agreed to sell and plaintiffs to buy a lot in an addition to Clarendon Hills in DuPage County, Illinois) there was a trial by the court; a motion by defendant for a finding in his behalf on the ground that the evidence was insufficient in law, which was overruled; propositions of fact and law submitted by defendant marked "held" or "refused" by the trial Judge, and thereafter a finding for plaintiffs in the sum of \$1708.69, on which the court entered judgment. The court refused to hold, as requested by defendant, that there was no encumbrance on the lot sold by him to plaintiff, or that defendant was ready, willing and able to deliver a deed to plaintiffs in accordance with the contract, or that defendant was ready, willing and able to deliver to plaintiffs a guaranty policy of the Chicago Title & Trust Co. in accordance with the terms of the contract. The court held as requested that plaintiffs failed and refused to make payments in accordance with the terms of the contract.

The contract was made April 16, 1928. It provided, in substance, that plaintiffs agreed to buy and defendant to sell the lot for the sum of \$980, payable \$100 upon the execution of the contract, and \$10 or more in installments upon the first day of each and every month thereafter, with interest on the balances remaining from time to time unpaid at the rate of six per cent;

that plaintiffs would pay taxes and assessments; that time was of the essence of the contract, and that defendant might for failure to make the payments cancel and terminate the contract upon ten days notice; further, that if plaintiffs made the payments as agreed defendant would procure the conveyance of the lot to them by trustee's deed from the owner, and would deliver an owner's guaranty policy in the usual form issued by the Chicago Title & Trust Co., showing title in the owner.

The contract provided that the title to the lot was to be subject to building and zoning ordinances and that the lot should be used by the purchasers for residence purposes only; that any building erected prior to January 1, 1933, should cost at least \$5,500; that payments were to be completed by April 15, 1933.

Upon the trial plaintiffs offered evidence tending to show that after the making of the contract, in the summer of 1932, it was for the first time discovered by the parties that an old sewer ran about four and a half feet below the surface and across the lot in question, which made it impossible to build a residence on the lot; that the matter was taken up with defendant's representative by plaintiffs; that September 8, 1932, defendant wrote to Mr. Bishop as follows:

"Arrangements have been completed with the Village of Clarendon Hills thru Mr. Earl Weipert, Chairman of their Sanitation Committee, whereby a new tile line will be constructed to replace the old line which cuts across your property and other private property in our Golf Club Addition to Clarendon Hills. The engineer's drawings and estimates are in Mr. Weipert's hands, and according to him work will start within the next ten days.

Yours very truly,
Arthur T. McIntosh & Co.
By E. T. Chalberg."

that in reliance upon this promise plaintiffs continued to make payments under the contract; that thereafter Mrs. Bishop talked with Chalberg, the representative of defendant, about the matter; that he told her that the sewer had been in there for twenty years

1. The first of these is the fact that the Government has not been able to secure the necessary funds to carry out its policy of maintaining the value of the dollar. This has been due to a variety of factors, including the fact that the Government has not been able to secure the necessary funds to carry out its policy of maintaining the value of the dollar.

[illegible][illegible]

THE UNIVERSITY OF CHICAGO
CHICAGO, ILLINOIS 60637
U.S.A.

and defendant could not take it out; that Mrs. Bishop told Chalberg that the lot was no good to plaintiffs as it was, and that Chalberg then asked her to look at other lots and see if plaintiffs would be willing to accept another in place of the one for which they had contracted; that with an agent of defendant plaintiffs examined other lots but were not able to find any which were satisfactory to them; that after Mrs. Bishop's last conversation with Chalberg plaintiffs discontinued making further payments on the lot; that they had then paid up all the installments with the exception of \$40.

Chalberg, when asked upon cross examination whether he could have the sewer line diverted, said he would have the right to do so, but when asked the direct question of whether he would do it, said he could not answer that question. The following colloquy then occurred:

"The Court: You cannot-- unless you get the consent of the Village-- divert your tile on the streets.

A. That is right, unless we get the consent of the Village, but--

The Court: No use arguing.

Mr. Eitzer (attorney for plaintiffs): That is all."

Defendant contends that plaintiffs could not rescind the contract because they were in default in making payments and cites a number of cases, such as Emmes v. Der Germania Turn Verein, 8 Ill. App. 663; Ayers v. Gross, 59 Ill. 436. There is no doubt of the general rule stated in these cases, but when, as here, the evidence shows an inability on the part of the vendor to perform, with his promise to remove the inability and a subsequent confession that such promise cannot be fulfilled, it is clear that the rule contended for is not applicable. Plaintiffs were not in default, so far as this record shows, at the time defendant's inability to convey an unencumbered title was disclosed. Under such circumstances the law did not require plaintiffs to continue payments, - making payments under the contract which defendant admitted he could not perform. There are many cases which announce this

principle. Fullerton v. Adams, 80 Ill. 13; Collins Ice Cream Co. v. Stephens, 189 Ill. 200; Chicago Title & Trust Co. v. Louis Lyster Co., 242 Ill. 468, are a few of the many which so hold.

Defendant relies on Rugeberg v. Meredith, 107 Ill. App. 879, but the facts in that case are not similar to those which here appear. There was in that case no admission by the vendor of inability to deliver title as agreed. Plaintiffs were entitled to a title unclouded and unencumbered. Firebaugh v. Tildenberg, 309 Ill. 536. The court was justified on the evidence in finding that defendant was unable to give it, and this was admitted by the agent of defendant.

It is next argued that the court erred in permitting Mrs. Bishop to relate her conversations with Chalberg, because his agency for defendant was not first established. Chalberg seems to have had entire charge of the matter in defendant's behalf, and defendant has vouched for him in that respect by filing an affidavit of merits in this action, which is verified by Chalberg, who states "that he is the agent duly authorized in this behalf of Arthur F. McIntosh." Moreover, this objection does not seem to have been urged in the trial court and seems to have been presented for the first time in this court. It is without merit.

Defendant cites authorities to the proposition that one who claims the existence of an easement must definitely point out the supposed dominant and servient estates necessary to create such an easement. He also contends, citing many authorities, that the trial court erred in disregarding presumptions in favor of the true owner of the land and in drawing ^a conclusion based on other presumptions, which in turn were based on assumed facts and circumstances not proved, and argues that the proofs failed to show any user of the alleged prescriptive right. He points out the elements necessary to the creation of a title by adverse possession, citing

to this point alone more than twenty authorities, to which it is quite sufficient to say that plaintiffs were not obligated under this contract to buy a law suit.

It is also urged that the proof was insufficient to support the assessment of damages. The damages claimed were set up in detail in paragraph 9 of the statement of claim. They were not denied in defendant's answer and upon the trial were established by at least prima facie proof which was not contradicted. This was sufficient.

It is urged that the general finding for plaintiffs was inconsistent with the special finding that plaintiffs had failed and refused to make payments. It was not inconsistent, for reasons we have already stated.

It is alleged that the amended statement of claim did not state a cause of action, and that therefore the motion in arrest of judgment should have been allowed. The cause was tried in the Municipal court; defendant made no objection to the amended statement of claim. He is now precluded from making such objection. Saldukas v. Robin, 250 Ill. App. 252; Emberg v. City of Chicago, 271 Ill. 404; Bruner v. G. T. Ry. Co., 410 Ill. 421.

For the reasons indicated in the opinion, the judgment of the trial court is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000. It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000.

It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000. It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000.

REMARKS

It is noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000. It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000.

It is noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000. It is also noted that the steel was furnished in 1904
the measurement of damages. The damages claimed were not up to
the amount of \$100,000.

REMARKS

REMARKS

REMARKS

REMARKS

REMARKS

REMARKS

38447

PEOPLE OF THE STATE OF ILLINOIS
ex rel. OSCAR NELSON, Auditor of
Public Accounts of the State of
Illinois,

vs.

KIMBELL TRUST & SAVINGS BANK,
a Corporation.

THE GUARDIAN LIFE INSURANCE COMPANY
OF AMERICA, a Corporation,
Intervening Petitioner - Appellee,
vs.

WILLIAM L. O'CONNELL, as Receiver of
KIMBELL TRUST AND SAVINGS BANK, a
Corporation,

Appellant.

93 H
APPEAL FROM
CIRCUIT COURT
COOK COUNTY.

282 I.A. 639⁴

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

O'Connell, as receiver of the Kimbell Trust & Savings Bank, appeals from an order entered May 3, 1913, enjoining him from removing, destroying or taking away the safety deposit boxes in the bank building formerly occupied by the Kimbell Trust & Savings Bank.

An intervening petition, in the proceedings for the dissolution of the Kimbell Trust & Savings Bank, was filed by the Guardian Life Insurance Co., the owner of notes secured by a trust deed, conveying the premises on which the building containing the safety deposit boxes was situated. The cause was heard upon this petition of the insurance company, the answer of the receiver thereto and testimony heard in open court. The decree which awarded these boxes to the insurance company provided that "said safety deposit boxes" be and remain a part of the real estate included in the trust deed covering said premises securing the mortgage indebtedness to The Guardian Life Insurance Company of America." The decree also finds (and the evidence sustains the finding) that these safety deposit boxes were placed in the building at substantially the time of its erection for the purpose of increasing its value

REPORT OF THE STATE OF ILLINOIS
ON THE
FISCAL YEAR 1888

1888

REPORT OF THE STATE OF ILLINOIS
ON THE
FISCAL YEAR 1888

REPORT OF THE STATE OF ILLINOIS
ON THE
FISCAL YEAR 1888

REPORT OF THE STATE OF ILLINOIS
ON THE
FISCAL YEAR 1888

REPORT OF THE STATE OF ILLINOIS

REPORT OF THE STATE OF ILLINOIS

REPORT OF THE STATE OF ILLINOIS

REPORT OF THE STATE OF ILLINOIS
ON THE
FISCAL YEAR 1888

for occupancy and use; that the building was erected as a special building for the particular purpose of being used as banking quarters by the Kimbell Trust & Savings Bank, and that the premises could not conveniently be used for banking quarters without the safety deposit boxes; that at the time the trust deed was executed it would not have been practicable or convenient to have used the premises for any purpose other than conducting a banking business. The decree also finds that at the time the mortgage was executed it was the intention of the parties to the trust deed that the safety deposit boxes were to be a part and parcel of the real estate included in the premises conveyed by the trust deed as security for the indebtedness held by the petitioner Insurance company.

The question is therefore squarely presented as to whether as between the owner of the mortgage indebtedness and the receiver of the mortgagor bank, safety deposit boxes, under circumstances here appearing, are real estate or personalty. The facts can scarcely be said to be in dispute. The Kimbell Trust & Savings Bank was organized in February, 1919, when it occupied other quarters. Early in 1924 it began the construction of the building in question. The plans in evidence disclose an office building with quarters for the bank. The front of the building is of a monumental bank type; the first floor was used for banking purposes and is two stories in height. At the rear of it is a safety deposit vault constructed of reinforced concrete. The walls of the building are eighteen inches thick; the walls of the vault twenty-seven inches thick. The vault is a permanent part of the building. Its only purpose was to contain safety deposit boxes for the use of customers. The Kimbell bank did not contemplate using it for any other purpose. The boxes are of heavy steel construction; they were put in by safe movers through the use of machinery. The building could be used as it is for a loan and mortgage agency, or some like use. No use of that

kind, however, was contemplated at the time the trust deed was executed and the building constructed.

While the plans show where the boxes were to be placed, they do not indicate the number of such boxes. The vault contained old boxes that had been taken over from the other bank building and new boxes which had been made to order and placed in the vault. Some of the new boxes were in the vault at the time the mortgage was executed. The safety deposit boxes were made up in sections of various sizes; none of the sections is attached or fastened to the building in any way whatever; they rest in the vault by their own weight and could be removed without difficulty and without damage to the building generally. The boxes cost from five to eight dollars a box. They were an essential part of the bank business and were intended to be a permanent part of the Kimbell bank business. The vault would not have been of any value as a vault without the safety deposit boxes. These boxes could be used in any other bank.

September 15, 1924, the trust deed was executed to secure an indebtedness of \$150,000. The building was then practically completed, and the plans were shown to the mortgagee, the intervening petitioner. Default was made in the payment of the indebtedness and \$80,000 is due upon the principal. Petitioner filed its bill to foreclose, a decree of sale was entered and the sale held. January 15, 1925, a deficiency decree was entered for the sum of \$7030.15.

The receiver contends that these boxes should not be held to be a part of the realty and relies on the leading case of Sword v. Low, 122 Ill. 487, and subsequent cases which follow it down to Thuma v. Granada Hotel Corp., 269 Ill. App. 484. The property involved in the Sword v. Low case was an engine and boiler, and the vendor of these articles had been given a chattel mortgage by the vendee owner to secure the payment of the purchase price. After setting the machinery up on a lot purchased by him, the vendee re-

any kind of effort will result only in disappointment and, worse, failure.

• *Journal of Management Education* 24(11):1031-1046, 2000.

Downloaded from <http://ajphaphysiol.physiology.org/> at University of California, San Diego on May 12, 2015

any is not included the number of your house.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-11-2010 BY 60322 UCBAW

There are a number of interesting observations that can be made from this

1995-1996

THE UNIVERSITY OF CHICAGO PRESS

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-01-2001 BY 60322 UCBAW

THE UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D. C. 20250

about 1910, was at least of this general type. (page 11)

U.S. DEPARTMENT OF AGRICULTURE

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

10-11-1964

well-known. Indeed, not only is the system of the International

U.S. GOVERNMENT PRINTING OFFICE: 1964

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

[illegible]

THE UNIVERSITY OF CHICAGO

As a result, it was possible to obtain an earlier time window to study the

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

[illegible]

THE UNIVERSITY OF CHICAGO

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

2017年，中国对俄罗斯出口货物价值为168.9亿美元，同比增长1.2%；进口货物价值为168.9亿美元，同比增长1.2%。

Downloaded from <http://ajphaphapublications.sagepub.com/> at 11:23 24 October 2014

moved this chattel mortgage. He conveyed to a third person the lot on which the engine and boiler stood, and the vendee of the lot filed his bill to enjoin the mortgagee from removing the property. The injunction, which was at first granted, was afterward dissolved and the Supreme court affirmed the order. Relying upon this and similar cases, the receiver says:

"It is the intention with respect to an annexed chattel that determines whether it is to be considered irremovable because of the annexation, or removable in spite of the annexation. Another important element is the nature and character of the intention. The intention of the party making the annexation must be directed toward making the chattel annexed a permanent accession to the freehold."

The cases cited, we think, will hardly bear this construction. Again summarizing the facts, the receiver says that the boxes are not attached to the real estate or anything appurtenant thereto; that they are not exclusively appropriate to the building but can be readily used elsewhere, and that it was not intended to make them a permanent accession to the freehold; that the boxes rest on the floor by their own weight and can be moved, with a little more energy, as readily as desks and typewriters. The boxes are not, the receiver says, peculiarly adapted to the Fishell bank but could be easily used in any other vault; indeed, some of them were second-hand when put in use.

The receiver also argues that it was not the intention to make these boxes a permanent accession to the freehold, pointing out that the plans do not state the number of boxes, nor describe the same; that the boxes were ordered as needed by customers, and that the president of the bank testified that the boxes were taken in just as were the typewriters, desks and chairs, which were admitted to be personalty.

The receiver relies very much on Merchants Loan & Trust Co. v. Merchants Safe Deposit Co., 167 Ill. App. 315. In that case the vault in which the safety deposit boxes were located was leased by the bank to the Deposit Co. under a verbal lease. The lessee pur-

and the Bureau could determine the extent. Requested that you
The information, which was at that time needed, was returned immediately.
Tried his best to obtain the same type from reviewing the records.
on which the engine had failed, but the results of the test
needed this critical analysis. It appeared in a brief report that

1944-1945

"It is noted that the subject was interviewed by Special Agent [redacted] on [redacted] at which time he advised that he had been contacted by a person who offered him \$10,000 to travel to Cuba and assist in the overthrow of the Government. The subject stated that he had refused the offer and was now being sought by the FBI." (S)

[illegible]

The receiver also states that it was not his intention to take these boxes to the Government and that he was not aware of the fact that the boxes were being sent to the Government. He also states that he was not aware of the fact that the boxes were being sent to the Government.

the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States.

chased 2226 boxes, which were installed in the vault. Later a new written lease of the vault was made to the Deposit Co. Thereafter the bank sold the premises. The Deposit Co. sold the boxes to another company which removed them from the premises. The purchaser of the building sued the Deposit Co. for an alleged conversion of the boxes, and upon trial before a jury plaintiff had a verdict upon which judgment was entered. Upon appeal to this court the opinion by Mr. Justice Freeman pointed out that the Deposit Co., while a tenant, had purchased the boxes, paying \$8000 therefor, and that this fact and other evidence were sufficient to raise an issue of fact as to the ownership. The judgment was reversed because of an instruction given by the court to the jury to the effect that the title to the boxes was in plaintiff, and that defendant had no right to sell or remove them and were liable if they did so. It was for the error in giving this instruction that the judgment was reversed.

That case, when rightly understood, comes far from sustaining the position of the receiver, in the first place because there the boxes were moved upon the premises by a tenant who paid for them, while in the instant case the boxes were purchased by the owner of the premises, who executed the mortgage, under which the insurance company claims. In the second place, the court there held only that under the circumstances appearing the question of the intention of the parties was for the jury. Here the finding of the court, which is entitled upon appeal to the same weight as the verdict of a jury, is in favor of the insurance company.

There is a material difference between the cases where a tenant who has leased the premises expends his own money for articles of this kind, which are thereafter used in connection with the premises, and the case where the owner makes such purchases. In the first case, the reasonable inference is that the tenant purchaser regards the property as movable, while the reasonable inference as to an owner is that he intends to make the property purchased a part of

[illegible]

the premises in connection with which it is used. In Baker v. McClurg, 128 Ill. 33, our Supreme court said: "The rule in Illinois is liberal in favor of the tenant," and, "In this state the intention so manifested is regarded as the principal test to determine the right of removal." In Hacker v. Munroe & Sons, 176 Ill. 384, "The books lay down the rule that the effort of the court will always be to ascertain the intention of the parties and to give it effect." In Ogden v. Stock, 34 Ill. 522, the Appellate court said: "The intention may be inferred in some cases from the manner in which the improvement is attached to the realty and in others from the nature of the title of the party making it or from the purpose with which it is made." In Calumet Iron & Steel Co. v. Lalorog, 36 Ill. App. 249, the court said:

"The general rule undoubtedly is, that all fixtures, whether actually or constructively annexed to the realty, pass by a conveyance or mortgage of the freehold, where there is nothing to indicate a contrary intention. Nor is it necessary, in all cases, that things should be actually affixed to the freehold in order to constitute a part of it, for the purpose of transfer or sale, as in the case of millstones which are constantly being taken up and sharpened."

In Ward v. Earl, 36 Ill. App. 635, the Appellate court said:

"Washburn discussing fixtures said: 'While courts still refer to the character of the annexation as one element in determining whether an article is a fixture, greater stress is laid upon the nature and adaptation of the article annexed, the uses and purposes to which that part of the building is appropriated at the time the annexation is made, and the relation of the party making it to the property in question as settling that a permanent annexation is intended.'"

In Corpus Juris 600, the result of the cases is summarized as follows:

"More usually, however, the mode of annexation, when considered at all, is considered as only one factor in the determination of the character of the article annexed. And, the tendency of the later decisions is toward the treatment of this as a minor consideration in determining the intention of the annexer and whether the article annexed constitutes a part of the realty, except at least as the article may have been so incorporated with the realty as to be incapable of severance without substantial injury thereto."

It would serve no useful purpose to review at length the numerous cases in this and other states which consider this question. The finding of fact here is in favor of the Guardian Life Insurance

Co. of America, and even if the evidence may be regarded as equally balanced, this finding would be determinative. Commonwealth Credit Corp. v. Commonwealth Mortgage Co., 275 Mass. 335. However, we do not regard the evidence as equally balanced. The facts that these boxes were purchased by the owner of the premises, and that they were most adaptable in permanent use to the premises as constructed, constrain us to hold that upon the uncontradicted evidence the boxes are a part of the realty.

For these reasons the judgment is affirmed.

AFFIRMED.

McSurely, P. J., and O'Conner, J., concur.

the 10th of the month, and even at the present time the
situation is not very satisfactory. The situation is still
not very satisfactory. The situation is still not very
satisfactory. The situation is still not very satisfactory.
The situation is still not very satisfactory. The situation
is still not very satisfactory. The situation is still not
very satisfactory. The situation is still not very
satisfactory. The situation is still not very satisfactory.

There are a few more things.

The situation is still not very satisfactory.

The situation is still not very satisfactory.

The situation is still not very satisfactory.

38468

T. C. FREDRICH,
Appellant,

vs.

BOARD OF EDUCATION OF THE CITY
OF CHICAGO, a body corporate politic,
Appellee.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 640

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

Fredrich sued the Board of Education of the City of Chicago in assumpsit. He filed the common counts, to which was attached a bill of particulars, which disclosed claims by him an account of services as an accountant alleged to have been rendered from December 2, 1929, to July 28, 1930, the total claim amounting to \$4517.20. Defendant filed a plea of the general issue with an affidavit of merits to the effect that defendant was not indebted to plaintiff, as alleged, for the whole or any part of the claims; that plaintiff did not render the services to or for defendant at its special instance and request as set forth in the bill of particulars. The issue was tried by the court without a jury, the finding was for defendant, with judgment that plaintiff take nothing by his suit and for costs against him.

Plaintiff is a certified public accountant. Defendant is a municipal corporation created by the statute of the state, and its powers are limited to such as are granted by the legislature. It is a body corporate^{and} politic created for the purpose of providing public schools in the city of Chicago according to the statute. It is controlled by eleven directors named by the mayor of the city and approved by its council. These directors elect a president, but neither the president nor any director, nor any employee, has the power to employ anyone. The board itself is the employing agency and can act only by resolution. Illinois State Bar Stat. 1935, Chap 122, sections 128-139, pages 2565 and 2574. At the time here in

question. E. Wallace Caldwell was president of the board. The supposed employment of plaintiff came about in this way: November 27, 1929, Mr. Meyers, a member of the board, presented to it the report of the sub-committee of the committee on buildings and grounds, recommending for adoption a resolution that a joint committee of the Western Society of Engineers and the American Institute of Architects be asked to investigate the then methods prevailing in the design, construction and repair of school buildings in Chicago and to report to the board recommendations of desirable changes in methods; that the school board architect be directed to cooperate with this joint committee, and that the sub-committee be authorized to procure for the committee information in connection with past and present practices in these respects, as the joint committee through the chairman might request; that the joint committee be requested to prepare a form which would constitute a proper examination for the position of superintendent of construction for the Board of Education. The resolution was adopted.

Shortly afterward Caldwell talked with Gerhardt, who was the architect of the board, about the retention of outside help in connection with the investigation to be made by the committee, and he says Gerhardt suggested the employment of plaintiff in that connection. Caldwell said that funds were available in the contingent fund of the president, and that the retention of plaintiff would be satisfactory. The next day Gerhardt told Caldwell of the progress of the work and that plaintiff was at work preparing facts for the committee. Later Mr. Meyers wrote Gerhardt a letter requesting him to have plaintiff prepare necessary information for this committee, and plaintiff did the work for which he rendered bills from time to time to Mr. Meyers, which were referred to the board only by submitting them to individual members of it. Gerhardt says that he told Caldwell that the assistant to the investigating committee was not competent to do the work for the committee, and that plaintiff would be a good man to do it.

Plaintiff prior to this time did work for the board, for which he was paid \$11,000. He talked with Gernhardt, Caldwell, Meyers and others about the work, and it is not denied that he had full knowledge as to the circumstances under which he was employed to do it. The board as a board never employed plaintiff to do this work, and the board as a board never had knowledge that he was doing it, nor knew that unauthorized work by him had been accepted.

Section 130 of chapter 122 (Ill. State Bar Stats. 1935) in part provides:

"The business manager shall have general charge and control, subject to the approval of the Board of Education, of all purchases, the making of contracts and leases, the condemnation of sites, the erection, construction, alteration and repair of school buildings and all other matters not coming under the control of the Education or Law Departments."

The business manager was not consulted with reference to the employment of plaintiff and, so far as this record discloses, was never informed that he was doing any work. He seems to have been an entire stranger to the transaction, although under the statute he was the only one by whom the employment of plaintiff might have been properly initiated. The statute gives to the Board of Education power to make rules, not inconsistent with the statute, and these rules are in evidence in this case. These rules provide that the business manager may have such additional powers as may be granted to him by the board. When the board is in session it is the duty of the president to act on each emergency matter which arises and report such action to the next regular meeting of the board "provided, however, that no such action shall be final or binding unless ratified by the Board of Education."

In brief, the executive powers of the board are vested by the statute in the superintendent of schools, the business manager and the attorney of the legal department. In each case, however, the actions of these heads of departments are subject to the approval of

[illegible][illegible]

1. The Board of Directors of the Corporation has the honor to acknowledge the receipt of your letter of the 10th inst. in relation to the proposed sale of the property of the Corporation to the City of New York.

2. The Board of Directors has considered the same and has decided to decline to sell the property to the City of New York.

3. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

4. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

5. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

6. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

7. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

8. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

9. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

10. The Board of Directors has also decided to sell the property to the City of New York at a price of \$100,000.

On April 17, the committee members of the House and Senate
held a public hearing on the proposed legislation. The hearing was
held in the Senate Chamber. The House members, however, held
their hearing in the House Chamber. The Senate hearing was
held in the Senate Chamber. The House hearing was held in the
House Chamber. The Senate hearing was held in the Senate Chamber.
The House hearing was held in the House Chamber. The Senate hearing
was held in the Senate Chamber. The House hearing was held in the
House Chamber. The Senate hearing was held in the Senate Chamber.

the board. The board may appoint other officers and employees as it may deem necessary, but is limited in such appointments to the provisions of the Civil Service Law. The letting of contracts and the erection and repair of school buildings are under the general supervision of the business manager, subject to the approval of the board. The bureau of architecture was created by the rules in the business department under the control of the business manager. The architect, although the head of the bureau, has no statutory power whatever. He is merely the head of one of the bureaus in the business department and is under the general charge and control of the business manager, subject to the approval of the board. He has no powers, except as an assistant to the business manager. The powers of the superintendent, attorney and business manager are illustrated by the construction placed on the statute by the Supreme court in Judd v. Board of Education, 343 Ill. 486, where a resolution of the board, which, in effect, substituted another attorney for the board attorney, without removing the attorney, was held illegal and void.

Section 130 of chapter 122 places the business manager in general charge and control of all purchases, contracts, leases, etc., and all other matters not coming under the control of the education or law department. Section 131 defines the powers of the board itself. It provides in substance that its action shall be taken only at the regular meetings of the board by a vote of not less than a majority of the full membership; that the yeas and nays on resolutions in such action shall be taken and recorded. Section 138 $\frac{1}{2}$ provides for the adoption of an annual school budget, which shall appropriate for the necessary expenses and liabilities incurred during the fiscal year. It requires the board to specify the several organization units, purposes and objects for which appropriations are made, the amount appropriated for each organization unit, purpose or object, and the fund from or to which the amount to be appropriated is to be paid or

charged and must include all current expenditures or charges to be made or incurred during the fiscal year. It prohibits further appropriations after the adoption of the budget. It provides:

"Neither said board, nor any member or committee thereof, nor any officer or head of any department or bureau thereof, or employe thereof, shall, during a fiscal year, expend or contract to be expended any money, or incur any liability, or enter into any contract which, by its terms, involves the expenditure of money for any of the purposes for which provision is made in the annual school budget in excess of the amounts appropriated in said budget. Any contract, verbal or written, made in violation of this section shall be null and void as to said board of education, and no moneys belonging thereto shall be paid thereon."

Defendant contends and cites cases which hold that any contract made in a manner prohibited by these provisions of the statute is ultra vires defendant corporation; that the question of the validity of such contract can be raised under the general issue, and that contracts which have not been authorized by a majority vote of the board on an aye vote by the members while the board is in regular session are unenforceable; that oral evidence to prove what the action of the board was, is not admissible; and that the contract here sued on, being prohibited by a valid statute, is void; that a legislative body cannot part with its powers to another, and that everyone is presumed to know what its powers are. It is also contended that plaintiff cannot recover on his contract, because no appropriation was made for his services in the annual budget and because his hiring was in violation of the Civil Service Law. In support of these propositions defendant cites School Directors v. Fogelman, 70 Ill. 130; Harris v. Hill, 108 Ill. App. 306; Crawford v. Board of Education, 216 Ill. App. 198; National Bank of Decatur v. Board of Education, 308 Ill. App. 57; Rissel v. Board of Education, 344 Ill. App. 337; Scanlan v. Board of Directors, 345 Ill. App. 337; James v. City of Streator, 316 Ill. 123; May v. City of Chicago, 134 Ill. App. 577; Higler v. City of Cairo, 345 Ill. App. 333; Frayer v. Board of Highland, 265 Ill. App. 443; Guthman v. City of Chicago, 303 Ill. 292.

Plaintiff admits, as we understand his brief, that his employment was not in the form provided for by the statute, but insists that the evidence shows an authorization or ratification; that the burden of showing a want of appropriation was on defendant; and that his employment was not in violation of the Civil Service Law, since he was, as he says the evidence discloses, an independent contractor. He further argues to the effect that having actually performed the services as requested, defendant Board of Education is now estopped to assert that he was not employed, and he says that it is liable upon that ground. As to the lack of appropriation plaintiff cites Hall v. County of Cook, 359 Ill. 523, where it was held that this lack of a lawful appropriation was a matter of defense, and the burden to show it upon defendant who asserted it.

In this case the appropriation bill of the Board of Education was put in evidence and fails to disclose any appropriation for in plaintiff's services. This was the opinion of the trial Judge a sufficient showing, and we agree with that view. The evidence fails to disclose any ratification by the board of plaintiff's employment. If there is such evidence in the record, it is not pointed out in the brief of plaintiff, and assuming that his work was of such nature as to make him an independent contractor (with which contention we are inclined to agree, although contrary to the opinion of the trial Judge who heard the evidence) the controlling question in the case is whether under the circumstances here disclosed, defendant is estopped, having received the benefit of plaintiff's services, to now deny that he was legally employed to render the services. It seems to be well settled by the authorities that a municipal corporation may be so estopped. The doctrine was well expressed in People v. Spring Lake Dist., 253 Ill. 479, where our Supreme court said:

"There is another class of municipal contracts which are usually classed as ultra vires which are only so in a limited or secondary sense. These are contracts which are within the general powers of the corporation but which are void because the power was irregularly exercised, or where some portion of an entire contract exceeds the corporate powers but other portions of the contract are within the corporate powers. This class of municipal contracts is well illustrated by the case of City of East St. Louis v. East St. Louis Gas Light and Coke Co., 96 Ill. 416. *** Many cases are to be found applying this rule, and the principle is now firmly established that the doctrine of ultra vires is not applied (except in cases where the contract is prohibited by some rule of law) where its enforcement would enable the municipality to obtain an unconscionable advantage of the other party to the contract, and that municipal corporations, as well as private corporations and natural persons, are bound by the principles of common honesty and fair dealing. Contracts made by a municipality which are merely ultra vires in a modified or secondary sense may be ratified and any defect in the manner of exercising the power thereby cured, and the municipality may likewise estop itself by acts in gain from setting up the defense of ultra vires. (2 Dillon on Mun. Corp., 5th ed., sec. 797.)"

The same rule was laid down in Logan County v. City of Lincoln, 81 Ill. 156, where the court said that in order to make the doctrine of estoppel applicable the acts of the municipal corporation must be positive acts; that non-action was insufficient; in Kramer of Schools v. Village of Cahokia, 357 Ill. 538, where the court in substance said that the doctrine was limited to cases where it would be inequitable to permit a municipality to stultify itself by retracting what its officers had done; in Great Lakes Bridge Co. v. Chicago, 353 Ill. 614, in which case, however, an actual legal contract had been entered into by the City with the plaintiff, but the court held that the defendant was liable under the terms of the contract, and if not, an emergency existed of so grave a nature that it would have been inequitable to permit the City to deny its liability; in Chicago v. Pittsburgh, C. O. & St. L. Ry. Co., 244 Ill. 226, where the City passed an ordinance, received all its benefits and then sought to escape liability upon the ground of its own neglect to publish the ordinance as required by the statute.

The gist of all these cases seems to us to be that the doctrine of estoppel will be invoked in such cases only for the purpose of preventing a result so inequitable that it would amount to fraud.

While perhaps all the cases cited are in many respects distinguishable so far as this particular case is concerned, this is the sum and substance of them all, and we are unable to find facts in this case which would require the application of the rule to this case. The facts and circumstances are all to the contrary. This plaintiff is presumed to know the law applicable to the board and the extent of its authority. In addition to that fact, there is evidence that would justify the inference of actual knowledge, since he had prior dealings with the board. There is no evidence here that the board as a board ever knew that he performed this work, or ever with knowledge accepted the benefits of the work he performed, and in the absence of any such knowledge on its part, there is no basis for a finding of conduct so inequitable as to amount to fraud, nor benefits accepted which unless paid for would amount to fraud. Indeed, the trial court was of the opinion that the resolution providing for the appointment of a committee in connection with which plaintiff's work was done was adopted under circumstances which indicated the intention of the board that the regular employees of the board were to perform the services. The employment of plaintiff was by special arrangement with one or two board members and the architect, who were entirely without authority to employ him, as he must have known.

For the reasons indicated the judgment of the trial court is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

[illegible]

38565

THE PEOPLE OF THE STATE OF ILLINOIS,
Defendant in Error,

vs.

NICK BASURIS,
Plaintiff in Error.

95-4
CRIMINAL COURT
OF COOK COUNTY.

282 I.A. 640²

MR. JUSTICE MATCHETT DELIVERED THE OPINION OF THE COURT.

Nick Basuris, with others, was indicted in the Criminal court of Cook county. The indictment contained three counts. The first charged that he, with others, attempted to burn a building known as 3811 West North avenue, (Chicago; that Basuris and others did certain acts toward the commission of the offense but failed in the perpetration of it. The second count averred that Basuris, with others, conspired unlawfully, with fraudulent and malicious intent "to set fire to and burn, and cause to be burned certain goods, chattels and personal property," etc., which property was insured by diverse insurance companies, naming them. The third count averred that Basuris, with others, unlawfully conspired with fraudulent and malicious intent, etc., "to set fire to and burn and cause to be burned certain goods, chattels," etc., insured by diverse insurance companies, naming them.

Basuris was granted a separate trial, and on motion of the State's attorney, an order was entered that the Felony charged in the indictment should be waived. He was arraigned, entered a plea of guilty of conspiracy to commit arson as charged in the indictment and, after warning persisting in his plea, was found guilty by the court "of conspiracy to commit arson in manner and form as charged in the indictment." Judgment was entered on the finding and defendant was sentenced to the House of Correction for one year and to pay a fine of \$29.75.

Basuris sued out a writ of error from the Supreme court, contending that the second and third counts charged conspiracy to

THE OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

100

100
100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

to commit a felony and also averred the burning of the goods, and that therefore the alleged conspiracy was merged in the consummated crime of arson; that the first count charged the attempted crime of arson, and that the judgment was therefore not responsive to any count and should be reversed. The case was considered by the Supreme court in The People v. Basuria, 356 Ill. 192. The opinion states in substance that Basuria entered his plea of guilty to the violation of Paragraph 52 of the Criminal Code (Smith's Stats. 1933, p. 1400); that this paragraph provided for punishment either by fine or imprisonment, or by both, and that the offense was therefore only a misdemeanor, and that the case should therefore be transferred to this court for consideration. Day v. The People, 149 Ill. 588, upon which defendant relies, has been greatly modified if not practically overruled by later cases.

In Graff v. The People, 308 Ill. 312, it appeared that Graff was found guilty of conspiracy to obtain money by false pretenses. Upon writ of error the appellate court affirmed the judgment, and the defendant sued out a writ of error from the Supreme court, where one of the alleged errors argued was that the indictment charged a misdemeanor while the evidence shows the offense to be a felony; that the misdemeanor was therefore merged in the felony, for which defendant had been tried. The opinion of the court pointed out that marked differences between felonies and misdemeanors existed at common law, not only as to the punishment inflicted in case of guilt, but also as to the procedure, the defendant accused of a misdemeanor having the privilege of counsel, the right to have a copy of the indictment and a special jury - all of which were by the common law denied to a defendant indicted for a felony. It had therefore at common law become the accepted doctrine that where the criminal act satisfied the definitions of both misdemeanor and felony, the misdemeanor merged in the felony and was gone. Therefore at common law one

charged with a felony could not be convicted of a misdemeanor on such an indictment. Felonies and misdemeanors were distinct and different things. These common law distinctions having been largely removed, the opinion states:

"If the indictment be for a conspiracy which is a misdemeanor, and the conspiracy comprises the doing of many things, and the proof shows that among the overt acts done pursuant to the conspiracy is a felony, it would seem the greater weight of authority is that a conviction may nevertheless be had for the conspiracy."

In The People v. Robertson, 204 Ill. 330, there was an indictment and a conviction on a charge of conspiracy, and it was argued in the Supreme court upon writ of error that the conspiracy was merged in the completed offense and therefore the defendants could not be convicted thereof. Replying to this contention, the court by Mr. Justice Cartwright said:

"A single transaction may include several independent crimes, and if there was anything left of the doctrine contended for after the decisions in the cases of Griff v. People, 200, Ill. 317, and People v. Barr, 255 id. 456, and 263 id. 302, it is certain that the conspiracy to commit a crime does not merge in the crime itself. The conspiracy is a crime of itself, and the offense is complete without the commission of the act for which the conspiracy was formed."

As a matter of fact the indictment here does not charge the overt and completed act, but even if it did, it is apparent that the contention of defendant, based on Boyd v. The People, 140 Ill. 333, cannot be sustained.

Defendant also contends that the finding being that defendant is guilty of conspiracy to commit arson, the judgment is at variance with the indictment, which does not charge conspiracy to commit arson but rather conspiracy to set fire to, burn or cause to be burned goods, etc., insured against loss or damage by fire. The State concedes that the offense charged was improperly designated as "conspiracy to commit arson," but points out that a finding with judgment thereon of guilty in manner and form as charged in the indictment would have been sufficient. The rest was surplusage. The People v. Westergahl, 316 Ill. 86. It is apparent from the

different views. There seems no possibility of a compromise at present with a view to the possibility of a settlement.

1992-1993

1. The first step in the process of the investigation is the identification of the problem. This is done by the investigator who is assigned to the case. The investigator will then gather information about the problem and the people involved. This information will be used to develop a plan of action. The plan of action will be based on the information gathered and the investigator's own experience. The plan of action will be used to guide the investigation and to ensure that the problem is solved. The investigator will then implement the plan of action and will monitor the progress of the investigation. The investigator will then report the results of the investigation to the appropriate authorities. The results of the investigation will be used to develop a plan of action to prevent the problem from recurring. The investigator will then implement the plan of action and will monitor the progress of the investigation. The investigator will then report the results of the investigation to the appropriate authorities. The results of the investigation will be used to develop a plan of action to prevent the problem from recurring.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

will not be considered further. We believe we will continue to work closely with the FBI and the State Department to ensure that the information we receive is accurate and reliable. We will continue to monitor the situation and will report any further developments to the appropriate authorities.

THE UNIVERSITY OF CHICAGO PRESS

1. The following information was obtained from the records of the Federal Bureau of Investigation, Bureau of Prisons, and the United States Department of Justice, Office of the Inspector General, regarding the activities of the following individuals:

As a matter of fact the Government has been very successful in its efforts to control the situation in the North. The Government has been able to maintain a strong and effective administration in the North, and has been able to maintain a strong and effective administration in the North. The Government has been able to maintain a strong and effective administration in the North, and has been able to maintain a strong and effective administration in the North.

[illegible]

whole record that the court found defendant guilty of the offense charged and sentenced him in accordance with the statute. This is sufficient. Hoch v. The People, 319 Ill. 288; The People v. Lawrence, 314 Ill. 298; The People v. Farrell, 349 Ill. 120.

The questions raised are purely technical. Defendant's guilt is admitted.

The judgment of the Criminal court is affirmed.

AFFIRMED.

McSurely, P. J., and O'Connor, J., concur.

single vessel that the court found it was not
 possible to determine the exact date of the
 seizure and therefore the court found it was not
 possible to determine the exact date of the seizure.
 The court found it was not possible to determine
 the exact date of the seizure and therefore the
 court found it was not possible to determine
 the exact date of the seizure.

The court found it was not possible to determine

the exact date of the seizure.

January 1, 1911, and January 1, 1912.

38160

M. FINKELSTEIN,
Appellee,

vs.

THE LAWRENCE AVENUE NATIONAL BANK
OF CHICAGO, a Corporation, and
FRANK J. CIMBAL as Receiver of the
Lawrence Avenue National Bank of Chicago,
Appellants.

96
APPEAL FROM CIRCUIT
COURT OF COOK COUNTY.

282 I.A. 640

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff, who had rented a safety deposit box from defendant bank, brought suit to recover \$7500, which through the alleged negligence of the bank was stolen from the box by thieves. There was a jury trial, a verdict and judgment in plaintiff's favor for the amount of his claim, and defendants appeal.

The record discloses that some time prior to January 1, 1931, defendant bank was not in a sound financial condition; that its affairs had been looked into by the national bank examiner of the Chicago District; that there were some negotiations between the bank, which was located on the northwest side of Chicago, and another bank in that neighborhood, with a view of consolidating the two banks. The bank was doing business on the last day of the year 1930, but was to remain closed the following day, which was New Year's day and a holiday. There was some talk on December 31st between John E. Malloy, assistant cashier of the bank, and the president, with the view of setting the time lock on the vaults for three o'clock on January 1st. The president of the bank testified that he did not see the necessity of having the lock on the vaults set to open on New Year's day because the necessary records of the bank were downtown in the office of the chief examiner of national banks, and the parties expected to complete the merger of the two banks on New Year's day in the examiner's office; that the contracts for this purpose had been

U. S. DEPARTMENT OF JUSTICE

Washington, D. C.

May 1, 1934

THE ATTORNEY GENERAL
U. S. DEPARTMENT OF JUSTICE
WASHINGTON, D. C.

104-111-1040

RE: JAMES EARL RAY, Defendant; ALBION B. KARPIS, Defendant.

Plaintiff, who has made a number of reports and has been
and has, through his attorney, been making the following
negligence of the bank was found that the bank was
was a jury trial, a verdict was returned in plaintiff's favor for
the amount of six million, one hundred and twenty thousand.

The report discloses that when the first of January 1,
1933, defendant took out a loan of \$100,000 from the bank; that
the officer had been listed by the plaintiff bank as having been
the Chicago District; that there were some conversations between
the bank, which was located at the corner of La Salle and
another bank in that neighborhood, with a view of obtaining
the two banks. The bank was found to have been in the hands of the
year 1932, but was to remain closed for a number of days, which was
two years ago and a number of years ago. There was some talk on December
that between John A. Karpis, defendant, and the bank, and
the president, with the view of getting the bank back on its
feet for three or four or five years. The president of the
bank testified that he did not see the defendant at Chicago and
that on the matter was in view of the fact that the defendant was
necessarily present at the bank with intention to the office of the
bank president at Chicago, and the various accounts in
regards the matter of the two banks on the first day in the
defendant's office and the president for this purpose had been

prepared but needed several signatures to close the matter, and it was proposed to obtain them on January 1st.

The deposition of Malloy (who was serving a four year term in the Federal penitentiary at Leavenworth) was taken in that prison and was read in evidence. From this it appears that he was indicted by a grand jury of the United States District Court for the Northern District of Illinois, Eastern Division, for making false entries in the records of defendant, The Lawrence Avenue National Bank of Chicago; that the jury found him guilty on March 24, 1931, and he was sentenced April 14, 1931, to serve a term of four years in the Federal penitentiary at Leavenworth, Kansas.

Malloy testified that he was assistant cashier of the bank from January 23, 1926, to January 1, 1931, on which day the bank was held up; that the day before he set the time lock on the vaults so they would open at three o'clock the next day; that he talked this matter over with the president and the vice-president and cashier of the bank; that the financial condition of the bank was bad at that time and that such condition started about January 17, 1930; that the chief national bank examiner of this district had been looking into the bank's affairs; that there was talk of merging the bank with another bank in the neighborhood; that a meeting was to take place at the chief examiner's office on New Year's day and that on December 31st the vice president, who was also the cashier, told Malloy to get up a statement which could be used at the meeting at the bank examiner's office to be held at eleven A. M. on New Year's day; that he went to the bank shortly before ten o'clock on New Year's day to make up the statement and about eleven o'clock, while he was at work at the bank, he answered the telephone and was told that Leyburn, the chief bank examiner, was talking; that he told the examiner that the time locks were so set that the vaults could be opened in the after-

noon; that the person speaking said he was going to close the bank and that he would send two men over to seal the vaults; that about half an hour later some one rattled the door; that he went to the door and saw two men outside; that he thought they were representing the bank examiner and opened the door; that the two men came in and he then closed the door and they covered him with pistols; that they then let in two other men through the rear door who were carrying burlap bags; that they were in the bank until about six o'clock in the evening; in the meantime they had apparently robbed the bank of some money and had broken open about eight of the safety deposit boxes, including plaintiff's; that during this time "I was always covered with a gun;" that about six o'clock they left the bank and made the witness drive them to Milwaukee where they left the automobile and transferred the loot to another automobile and drove off; that he immediately went to the nearest police station and told the police he had been kidnapped.

The national bank examiner testified that he did not call Malloy on New Year's day on the telephone. The president of the bank and the cashier both testified and there is considerable other evidence in the record, but we think it unnecessary to discuss the evidence further. There seems to be no contention but that plaintiff's safety deposit box was broken open on New Year's day.

Defendants contend the judgment should be reversed without remanding because the evidence showed that the bank was not guilty of negligence but on the contrary used reasonable care to protect plaintiff's safety deposit box. Defendants further contend that in any event the judgment should be reversed and the cause remanded because of the admission of evidence over defendants' objection, and that the evidence of the amount of money stolen from the box is insufficient to sustain the amount of the verdict. Defendants

again; that the person speaking said he was going to leave the
 bank and that he would send the man who was with him to the
 about half an hour later when the witness saw the man who
 to the bank and saw the man speaking; that he saw the man who
 mentioning the bank speaking and saying the man; that the man
 man came in and he saw almost the man and they stayed in the
 minutes; that the man is in the street and the man who was
 who were carrying boxes; that they were in the bank hall
 about six o'clock in the evening; he saw someone who was
 only passed the bank of some money and saw the man who was
 of the party present, including "HARRY", that person who
 time "I was always covered with a gun"; that about six o'clock
 they left the bank and were the witness alone in the street
 where they left the automobile and returned the fact of driving
 automobile and drove off; that he immediately went to the nearest
 police station and left the police for some time.

THE NATIONAL BANK BUILDING, NEW YORK, N. Y., MAY 1, 1914.

DEAR MR. WATKINS:

I have just received your letter of the 28th inst. and am glad to hear that you are well and happy. I am also well and hope to hear from you again soon.

Very truly yours,

W. A. R. WATKINS.

[illegible]

also contend that even if there were negligence on the part of Malloy it was not the "proximate cause" of the loss sustained.

The rules and regulations of the bank, which were a part of the contract between plaintiff and the bank when he rented the box, provided that "The liability of the bank is expressly limited to the exercise of ordinary diligence to prevent the opening of the within mentioned safe."

The record discloses that court and counsel discussed the submitted instructions out of the presence of the jury and that afterward the court instructed the jury; the instructions are not in the record and obviously no complaint is made that the instructions were not proper. The jury found in favor of the plaintiff; and even if the jury believed the somewhat fantastic story of Malloy, we think it clear that no verdict could stand except one finding defendant bank guilty of negligence. According to Malloy's testimony he was at the bank alone and had the time locks set so the vaults could open at three o'clock. So far as the record discloses, there was no reason for this; but in any event, the question was for the jury, and of course there was no reason why they should believe the story told by Malloy, a man who was convicted for falsifying the records of the bank.

But defendants contend that in another suit, brought against the bank to recover the contents of another safety deposit box broken open on the same day, which was heard before the judge without a jury, and in which the same deposition of Malloy was read, the court found in favor of defendant bank and that this was affirmed by another Division of this court - Merens v. Lawrence & Sons National Bank, 374 Ill. App. 650 (not published.) In that case the court said that the question of negligence was one of fact and that if the question were before the Appellate court in the first instance they might have found the defendant bank guilty of negli-

gence, but that the question was for the trial Judge. We have examined the record, abstract and briefs in that case and nowhere is there any reference to the fact that Malloy was serving a term of four years in the penitentiary, which would affect his credibility. In fact no such argument is made in the briefs before us. This omission is difficult for us to understand.

Plaintiff, his son Leo, and his brother-in-law, Jacob Strauss, gave testimony as to the amount of money in the box which plaintiff testified was missing after the box had been broken open. Plaintiff testified there was \$7,800 in paper money in the box; that the last time he counted the money was on December 18, 1930, and he goes into considerable detail as to the several denominations of the bills that made up the \$7,800; that at one time his son was with him when he opened the box and counted the money.

Plaintiff's son Leo testified that he was eighteen years old and that he went to the bank with his father about the middle of November, 1930; that his father opened the box, took out some money, called off the number and amounts of the bills which totalled about \$7000; that he did not count the money but wrote down the denominations of the various bills as called by his father. The father testified that at the time his son then read the figures off and the father then wrote them down on a memorandum, which is in evidence. These sums totalled \$7,430, and later there was a check cashed and the proceeds put in the box which approximately made up the balance.

Jacob Strauss, plaintiff's brother-in-law, testified that he went with plaintiff to the bank about the middle of December, 1930; that plaintiff opened the box and they went into a room and checked up the money, and that there was about \$7800 in the box.

Counsel for defendants say that what was said by plaintiff, his son Leo, and Strauss at the time the box was opened and the money counted was not admissible because made out of the presence

of the defendants. We think there is merit in the contention. Plaintiff had a right to testify as to the method used in counting the money and what was done in this respect. The weight of the testimony was, of course, for the jury.

Plaintiff also offered in evidence the written memorandum which he prepared at the time he and his son were in the safety deposit vaults, showing the number of bills aggregating \$7450. This was exhibit 3. Plaintiff also introduced in evidence three exhibits designated 2A, 2B and 2C. The first was an itemization of the number of bills and the denominations which totalled \$7350; it also contained a list of personal property, jewelry, etc. Exhibit 2B showed items of various mortgages that it was claimed were in the box; Exhibit 2C was a list of insurance policies. These three exhibits were given to the receiver after the bank closed.

Defendants contend that these four exhibits were erroneously admitted, over their objection. When Exhibit 3 was offered Mr. Wolff, counsel for defendants said, "We object. It is a private memorandum. Neither the original nor this were ever communicated to the defendant." The objection was overruled and the exhibit admitted. Exhibits 2A, 2B and 2C were then offered. This was June 14, 1934, the day the case went to trial. When the exhibits were shown to plaintiff he testified: "This writing is either my daughter's or my son's. At home when I heard the vaults were robbed I made this out to give the receiver of the bank, what it was in the vault. These are copies of the ones handed the receiver." Mr. Wolff: "Object." The Court: "Sustained until proof of the loss of the originals is established." The case then proceeded. At the conclusion of defendants' evidence counsel for plaintiff said he wanted to put in evidence Exhibits 2A, 2B and 2C. Counsel for defendants then stated he had no originals of these exhibits, which plaintiff testified he had given to the receiver. Thereupon counsel

for plaintiff said: "I offer in evidence Plaintiff's Exhibits 2-A, 2-B and 2-C. Counsel says he cannot find the originals." Mr. Wolff: "We have no originals of Plaintiff's Exhibits 2-A, 2-B and 2-C. If there was one filed - and there was a receiver in this case - if there ever was one filed, the originals of these papers were--" The Court: "They may be received in evidence." And they were admitted and no objection was made. This was on June 15th, the day after they were originally offered on June 14th. Counsel for defendants now say that these exhibits were erroneously admitted; that they were merely copies of plaintiff's claim filed with the receiver and were a "self-serving statement in the nature of a pleading," and had no probative effect. If the objection now contended for had been made when the exhibits were offered they should have been excluded; but no such objection was called to the attention of the court on June 15th, when they ^{were} received in evidence.

Plaintiff also contends that Exhibit 3 was purely hearsay - a self-serving declaration and therefore inadmissible; that it was further inadmissible because plaintiff testified after referring to it that it refreshed his recollection so that he could testify independently the number of bills and the denominations that were in the box when the money was counted. Obviously, if plaintiff's recollection was refreshed after examining the exhibit so that he could testify of his own recollection, the exhibit then could not be introduced in corroboration of his testimony. Each v. Pearson, 219 Ill. App. 448; Allaristi v. Murphy-Siler Oil Co., 280 Ill. App. 378; Sec. 800, 2 Wigmore on Evidence (2nd ed.); 2 Elliott on Evidence, Sec. 372; Kochler v. Abay, 188 Mich., 113. We think the exhibit was not subject to the objection that it was hearsay. The testimony was that the memorandum was made showing the bills and their denominations but none of the objections now urged was made when the exhibit was

[illegible]

offered and it is elementary that objections cannot be made for the first time in a court of review.

The judgment of the Circuit court of Cook county is affirmed.

JUDGMENT AFFIRMED.

McSurely, P. J., and Hatchett, J., concur.

There are 12 in all, and 12 is the number of the month of the year.

There are 12 in all, and 12 is the number of the month of the year.

The number of the month of the year is 12.

There are 12 in all, and 12 is the number of the month of the year.

There are 12 in all, and 12 is the number of the month of the year.

There are 12 in all, and 12 is the number of the month of the year.

38290

SAMUEL ROTHBLUM,
Appellant,

vs.

ARTHUR ALVIN GELATT and
MRS. ARTHUR ALVIN GELATT,
Appellees.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

282 I.A. 640

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit against defendants to recover damages for personal injuries claimed to have been sustained by him through the negligence of defendants in the operation of an automobile, as a result of which defendants' automobile collided with plaintiff's, injuring him. At the close of plaintiff's case there was a directed verdict for defendants; judgment was entered on the verdict and plaintiff appeals.

The record discloses that between six and seven o'clock on the evening of December 12, 1933, plaintiff was driving his 1926 Chevrolet automobile south in Leif Ericson Drive, otherwise known as the Outer Drive, between 31st and 32nd streets, Chicago. At the place in question there are eight lanes of traffic, four southbound and four northbound. There was a painted white line in the center of the roadway. Plaintiff was driving south just west of the center line of the roadway when something went wrong with his car and it came to a stop; he testified that he got out of the car, walked to the rear, saw he had plenty of gas and that the rear light was burning; that he called to persons who were driving south for assistance and that an automobile stopped in the west lane of traffic. He asked if the driver of the car, Mr. Anderson, would give his car a push to get it started, and upon receiving an affirmative answer went back to his car, got into it, and had just closed the door when suddenly defendants' car, which was being driven south by Mrs. Gelatt, ran into the back of plaintiff's

1043 A. 888

1043 A. 888

1043 A. 888

1043 A. 888

automobile, as a result of which the automobile was damaged and he was injured. Defendant Mr. Gelatt was not in the automobile.

Plaintiff testified that he took Mrs. Gelatt's name and she then proceeded on her way; that the driver who had promised to give plaintiff's car a push drove south in the west lane, turned across and came north on the east side of the white line in the center of the street, then turned back of plaintiff's car, gave it a push, and plaintiff then drove his car to a garage near his home on 79th street; that he then went home and called a doctor who found some slight injuries. Plaintiff was a court reporter and went to work the next day and continued to work, although he was not in as good condition as he was prior to the accident and later was examined by a doctor who found evidence of a double hernia.

Substantially the only evidence as to the speed of defendants' automobile just prior to the accident was given by Mrs. Anderson who was in the automobile with her husband who gave plaintiff's automobile a push after the accident, as above stated.

On direct examination of Mrs. Anderson the following occurred:

"Q. When you saw this car descending on his car was it going fast or slow?

Defendants' Counsel: I object, she has not been qualified.

The Court: She may answer, perhaps she may bring it out.

Defendants' Counsel: Your Honor, that certainly covers an awful lot of ground.

The Court: I don't think you have to be an expert. She may answer.

A. Well, you might know on the Outer Drive you don't go awfully slow.

Plaintiff's Counsel: Did you see it coming fast or slow?

A. Well, of course, it was coming fast, just like--"

The witness was then interrupted by plaintiff's counsel.

Counsel for defendants contend that their objections to these questions should have been sustained. It has been held that a witness may testify that a train was running fast or slow, but

automobile, as a result of which the automobile was damaged and
as was injured. Defendant's driver was not in the automobile.
Defendant testified that he was not with the automobile and
that when proceeded on his way; that the driver was not injured
to give Plaintiff's car a good drive across in the next town, turning
across and some north on the main side of the bridge and in the
part of the street, that a third party of Plaintiff's car, that it is a
good, and Plaintiff then gave him a car in a garage near the same
on Fifth Street; that he then went to his home and called a woman who
lived near Fifth Street, Plaintiff was a maid who lived near
west to Fifth Street and Plaintiff in town, Plaintiff in town
not in as good condition as he was when in the accident was taken
was examined by a doctor who found evidence of a brain injury.
Plausibly the only evidence to be the speed of Plaintiff's
auto, automobile just prior to the accident was given by the driver
and who was in the automobile with the driver and gave Plaintiff's
automobile a crash after the accident, as above stated.

On direct examination of him, Defendant has following

testimony:

Q. When you saw this car proceeding on the car was
it going fast or slow?
A. I don't know; I don't know, but I don't know.
Q. The driver: Did you answer, whether the car was
it fast.
A. Defendant's answer: I don't know, that completely
covers an entire lot of ground.
Q. The driver: I don't know whether he was in a hurry.
A. I don't know.
Q. A. Well, you were with me the whole time you
were in the car?
A. Plaintiff's answer: Yes, I was in the car the
entire time.
Q. A. Well, of course, if the driver had been in the car,
the driver was then represented by Plaintiff's counsel,
counsel for defendant would have been retained. It was
a witness, and finally that a state was reached that he was

to it
the weight that should be attached/is for the jury to determine.
I. O. H. E. Co. v. Ashline, 171 Ill. 313; Melenna v. Chicago City Ry. Co., 296 Ill. 314.

From the questions and answers above quoted, we think the evidence as to the speed of the car, while for the jury, was almost negligible.

Plaintiff in his complaint charged the defendants with negligence in the operation of the automobile and there were also counts charging that defendants were guilty of wilful and wanton misconduct in the operation of the automobile. There is no evidence at all that would tend to sustain the charge that defendants were guilty of wanton and wilful misconduct. In Bramer v. The Lake Erie and Western R. R. Co., 318 Ill. 11, the court said (p. 20): "If there is any evidence in the record fairly tending to show such a gross want of care as indicates a willful disregard of consequences or a willingness to inflict injury, then it is a question to be determined by the jury whether the negligent conduct of the defendant amounted to wantonness or willfulness." To the same effect is Bess v. Curtis Publishing Co., No. 33079, Appellate Court, First District, filed November 12, 1935, where we said: "The definition particularly applicable to the present circumstances is that wilful and wanton misconduct is that conduct which exhibits a conscious indifference to consequences," citing the Bramer case.

But plaintiff further contends that the court erred in instructing the jury to return a verdict for defendants. On a motion to direct a verdict the court cannot weigh the evidence. If there is any evidence, more than a scintilla, tending to prove plaintiff's case, the question must go to the jury although the judge might be of opinion that if a verdict were returned for plaintiff he would have to set it aside. Libby, McNeill & Libby v. Cook, 222 Ill. 206. In Minnis v. Friend, 360 Ill. 328, the court said

(pp. 335-336): "In passing upon a motion to direct a verdict the trial court is limited to determining whether there is or is not any evidence which tends to prove the facts alleged. When a jury is not waived the trial court has no power to determine the weight and preponderance of conflicting evidence."

On a motion to direct a verdict as in the instant case, all the evidence is to be considered in the aspect most favorable to plaintiff, together with all reasonable inferences. In the instant case plaintiff testified that his car was slowing down just before it stopped, and "at that particular moment there were a lot of cars on the right." Mrs. Anderson testified that their car was being driven south just prior to the accident at about 35 to 40 miles an hour. The evidence would indicate that there was considerable traffic at the time in question, moving at a good rate of speed; it was dark; plaintiff was in an exceedingly dangerous position when his car stopped, although he testified that his car was not stopped for more than a minute, and that the rear light was burning. In these circumstances we think there was more than a scintilla of evidence which would take the case to the jury on the question whether Mrs. Gelatt was guilty of negligence in driving into plaintiff's car. We are also of opinion we would not be warranted in holding that all reasonable minds would reach the conclusion that plaintiff was guilty of negligence for his own safety. We think it cannot be said his conduct was so violative of all rational standards of conduct applicable to persons in a like situation that the court could say, as a matter of law, that no rational person would have acted as he did. Kelly v. Chicago City Ry. Co., 213 Ill. 840. From what we have said it follows that the court should not have directed a verdict for the defendants.

Under the provisions of Sec. 68 of the Civil Practice Act the court might have reserved his decision on the motion for a

directed verdict and submitted the case to the jury, under proper instructions, and if the verdict should be for the plaintiff the court could then decide whether the motion for a directed verdict should be sustained, notwithstanding the verdict.

The judgment of the Circuit court of Cook county is reversed and the cause is remanded.

JUDGMENT REVERSED AND CAUSE REMANDED.

McSurely, P. J., and Matchett, J., concur.

... ..
... ..
... ..
... ..

... ..

... ..

... ..

... ..

38300

ALVINA KIETZMANN, Administratrix
of the Estate of LOUIS R. TOTZ,
deceased,

Complainant,

vs.

EDYTHE SCHMIDT et al.,
Appellees.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

On Appeal of VICTOR BURGESS,
Administrator of Estate of
BERTHA C. TOTZ, Deceased,
Appellant.

282 I.A. 641

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

By this appeal Victor Burgess, as administrator of the estate of Bertha C. Totz, deceased, seeks to reverse a decree of the Circuit court of Cook county which dismissed his counter claim, wherein he prayed that certain notes and mortgages aggregating \$5,800 be decreed to belong to the estate of Bertha C. Totz, deceased.

The record discloses that on December 5, 1911, Louis R. Totz married Bertha C. Steinbrechter, who at the time was the mother of two children, Charles and Edythe, from a former marriage. The son Charles died leaving as his only heir a daughter, Ethel Steinbrechter; the daughter, Edythe, married Felix Schmidt. From the time of their marriage in 1911 Louis R. Totz and Bertha C. Totz, his wife, lived together as husband and wife until January 2, 1933, when she died intestate; no children were born as a result of the marriage. She left her surviving as her only heirs at law and next of kin, her husband, Louis R. Totz, her daughter, Edythe Schmidt, and her granddaughter, Ethel Steinbrechter. Louis R. Totz died intestate June 2, 1935, leaving him surviving as his only heirs at law and next of kin, Alvina Kietzmann, his sister, and Edward Melchior, a nephew.

University of Washington
 1990-1991
 1992-1993

4. *Fluoride Limit*

100

1940-41

The second he interpreted
"I was born," "I am," "I shall be"

1120 .A1 S65

1992-1993-1994-1995-1996-1997-1998-1999-2000-2001-2002-2003-2004-2005-2006-2007-2008-2009-2010-2011-2012-2013-2014-2015-2016-2017-2018-2019-2020-2021-2022-2023-2024-2025-2026-2027-2028-2029-2030-2031-2032-2033-2034-2035-2036-2037-2038-2039-2040-2041-2042-2043-2044-2045-2046-2047-2048-2049-2050-2051-2052-2053-2054-2055-2056-2057-2058-2059-2060-2061-2062-2063-2064-2065-2066-2067-2068-2069-2070-2071-2072-2073-2074-2075-2076-2077-2078-2079-2080-2081-2082-2083-2084-2085-2086-2087-2088-2089-2090-2091-2092-2093-2094-2095-2096-2097-2098-2099-2100-2101-2102-2103-2104-2105-2106-2107-2108-2109-2110-2111-2112-2113-2114-2115-2116-2117-2118-2119-2120-2121-2122-2123-2124-2125-2126-2127-2128-2129-2130-2131-2132-2133-2134-2135-2136-2137-2138-2139-2140-2141-2142-2143-2144-2145-2146-2147-2148-2149-2150-2151-2152-2153-2154-2155-2156-2157-2158-2159-2160-2161-2162-2163-2164-2165-2166-2167-2168-2169-2170-2171-2172-2173-2174-2175-2176-2177-2178-2179-2180-2181-2182-2183-2184-2185-2186-2187-2188-2189-2190-2191-2192-2193-2194-2195-2196-2197-2198-2199-2200-2201-2202-2203-2204-2205-2206-2207-2208-2209-2210-2211-2212-2213-2214-2215-2216-2217-2218-2219-2220-2221-2222-2223-2224-2225-2226-2227-2228-2229-2230-2231-2232-2233-2234-2235-2236-2237-2238-2239-2240-2241-2242-2243-2244-2245-2246-2247-2248-2249-2250-2251-2252-2253-2254-2255-2256-2257-2258-2259-2260-2261-2262-2263-2264-2265-2266-2267-2268-2269-2270-2271-2272-2273-2274-2275-2276-2277-2278-2279-2280-2281-2282-2283-2284-2285-2286-2287-2288-2289-2290-2291-2292-2293-2294-2295-2296-2297-2298-2299-2300-2301-2302-2303-2304-2305-2306-2307-2308-2309-2310-2311-2312-2313-2314-2315-2316-2317-2318-2319-2320-2321-2322-2323-2324-2325-2326-2327-2328-2329-2330-2331-2332-2333-2334-2335-2336-2337-2338-2339-2340-2341-2342-2343-2344-2345-2346-2347-2348-2349-2350-2351-2352-2353-2354-2355-2356-2357-2358-2359-2360-2361-2362-2363-2364-2365-2366-2367-2368-2369-2370-2371-2372-2373-2374-2375-2376-2377-2378-2379-2380-2381-2382-2383-2384-2385-2386-2387-2388-2389-2390-2391-2392-2393-2394-2395-2396-2397-2398-2399-2400-2401-2402-2403-2404-2405-2406-2407-2408-2409-2410-2411-2412-2413-2414-2415-2416-2417-2418-2419-2420-2421-2422-2423-2424-2425-2426-2427-2428-2429-2430-2431-2432-2433-2434-2435-2436-2437-2438-2439-2440-2441-2442-2443-2444-2445-2446-2447-2448-2449-2450-2451-2452-2453-2454-2455-2456-2457-2458-2459-2460-2461-2462-2463-2464-2465-2466-2467-2468-2469-2470-2471-2472-2473-2474-2475-2476-2477-2478-2479-2480-2481-2482-2483-2484-2485-2486-2487-2488-2489-2490-2491-2492-2493-2494-2495-2496-2497-2498-2499-2500-2501-2502-2503-2504-2505-2506-2507-2508-2509-2510-2511-2512-2513-2514-2515-2516-2517-2518-2519-2520-2521-2522-2523-2524-2525-2526-2527-2528-2529-2530-2531-2532-2533-2534-2535-2536-2537-2538-2539-2540-2541-2542-2543-2544-2545-2546-2547-2548-2549-2550-2551-2552-2553-2554-2555-2556-2557-2558-2559-2560-2561-2562-2563-2564-2565-2566-2567-2568-2569-2570-2571-2572-2573-2574-2575-2576-2577-2578-2579-2580-2581-2582-2583-2584-2585-2586-2587-2588-2589-2590-2591-2592-2593-2594-2595-2596-2597-2598-2599-2600-2601-2602-2603-2604-2605-2606-2607-2608-2609-2610-2611-2612-2613-2614-2615-2616-2617-2618-2619-2620-2621-2622-2623-2624-2625-2626-2627-2628-2629-2630-2631-2632-2633-2634-2635-2636-2637-2638-2639-2640-2641-2642-2643-2644-2645-2646-2647-2648-2649-2650-2651-2652-2653-2654-2655-2656-2657-2658-2659-2660-2661-2662-2663-2664-2665-2666-2667-2668-2669-2670-2671-2672-2673-2674-2675-2676-2677-2678-2679-2680-2681-2682-2683-2684-2685-2686-2687-2688-2689-2690-2691-2692-2693-2694-2695-2696-2697-2698-2699-2700-2701-2702-2703-2704-2705-2706-2707-2708-2709-2710-2711-2712-2713-2714-2715-2716-2717-2718-2719-2720-2721-2722-2723-2724-2725-2726-2727-2728-2729-2730-2731-2732-2733-2734-2735-2736-2737-2738-2739-2740-2741-2742-2743-2744-2745-2746-2747-2748-2749-2750-2751-2752-2753-2754-2755-2756-2757-2758-2759-2760-2761-2762-2763-2764-2765-2766-2767-2768-2769-2770-2771-2772-2773-2774-2775-2776-2777-2778-2779-2780-2781-2782-2783-2784-2785-2786-2787-2788-2789-2790-2791-2792-2793-2794-2795-2796-2797-2798-2799-2800-2801-2802-2803-2804-2805-2806-2807-2808-2809-2810

[illegible]

It will be noted in the above that the only person who has been identified as having been in contact with the subject is the person who has been identified as having been in contact with the subject.

THE JOURNAL OF CLIMATE VOLUME 19

This research was supported by the National Science Foundation, Grant No. 1008080.

data provided a new view of the world in which we all

Information on the location of the study is provided in Table 1.

1. General Information

34. *Figure 4* is an example of a modified *in vitro* test that will work for you.

For more information, contact the author at the address below.

© 2001 International Dairy Federation. Published by Blackwell Science Ltd

February 23, 1934, Alvina Dietzmann, as administratrix of the estate of Louis R. Totz, deceased, brought suit claiming that Louis R. Totz and his wife Bertha O. Totz, in their lifetime had purchased out of their common earnings two notes, one for \$3300 and the other for \$2800, secured by mortgages on real estate in Chicago, and that after the death of Bertha O. Totz her daughter, Edythe Schmidt, secured possession of the two mortgages; the prayer was that Edythe Schmidt be decreed to hold the notes and mortgages as the common property of the estates of Louis and Bertha Totz, deceased.

April 17th Edythe Schmidt filed her answer to the amended complaint, in which she admitted she held possession of the notes and mortgages and "claims that she is the true and lawful owner thereof."

April 30, 1934, Victor Burgess, as administrator of the estate of Bertha O. Totz, deceased, filed his answer and counter claim in which he admitted most of the allegations made in the complaint and alleged that Bertha O. Totz, in her lifetime, "because in custody of certain notes and mortgages." It was further alleged in the counter claim that the notes and mortgages were in the possession of Edythe Schmidt; that demand had been made upon her to return them, which was refused on the ground that Edythe Schmidt claimed her mother had given her the mortgages prior to the time of her decease. The prayer was that a decree be entered directing Edythe Schmidt to return the notes and mortgages to the counter claimant so that they might be distributed to the heirs of Bertha O. Totz, deceased, in accordance with the laws of descent. May 9th Edythe Schmidt filed her answer to the counter claim, in which she denied that the counter claimant had any interest in the notes or mortgages and averred that they belonged to her, as set forth in her answer to the amended complaint.

The case was heard before the court without a jury. After

[illegible]

the evidence was all heard the court permitted Edythe Schmidt to file a supplemental answer to the counter claim, in which she averred that on or about December 25, 1932, her mother gave her the notes and trust deeds, physically delivering them to her with the intention of making a gift.

November 15, 1934, the court entered a decree dismissing the complaint of the administratrix of the estate of Louis R. Totz, deceased, and also dismissing the counter claim of the administrator of the estate of Bertha G. Totz, deceased; and the administrator of the estate of Bertha G. Totz prosecutes this appeal. No complaint is made by the administrator of the estate of Louis R. Totz, deceased, so that the controversy in this court is between the administrator of the estate of Bertha G. Totz, deceased, and Edythe Schmidt.

The evidence shows that on August 22, 1930, Bertha G. Totz bought the two notes and trust deeds in question from the Humboldt State Bank of Chicago, one of them, the Ohlinger, for \$2500, and the other, the Olsen mortgage, for \$3300; that she paid for the two and they were delivered to her at that time. The evidence is that she kept them in her possession from the date she purchased them until about two weeks before she died, which was January 2, 1933.

There is other evidence to the effect that about April or May, 1931, Mrs. Totz together with her daughter, Edythe Schmidt, went to the Humboldt State Bank. An employee of the bank, Mary D. Pitts, testified that she had been connected with the bank and with the Humboldt Bond and Mortgage Company, which was a department of the bank, for a number of years; that she knew Mr. and Mrs. Totz; that on August 22, 1930, Mrs. Totz purchased from the bank the two mortgages mentioned; (this was shown by the records of the bank which the witness had before her); that Mrs. Totz and her husband were present at the time the purchase was made and that Mrs. Totz took the money, which was in her account in the bank, to pay for the

the witness was not asked the question whether he had

seen a woman named Mary in the room where he was

working that he or about December 10, 1904, had

seen and that he had, especially following from the fact

that he was a girl.

November 10, 1904, the witness was a woman

the complaint of the administration of the estate of

James, and also showing the account of the

part of the estate of James S. Tate, deceased; and the

of the estate of James S. Tate deceased was

in the hands of the administration of the estate of

James, and that the testimony in this case is

that of the estate of James S. Tate, deceased, and

the witness was not on August 10, 1904, James S. Tate

James and the witness was in the room where he was

James S. Tate, deceased, and the witness was

James, the witness was not on August 10, 1904, James S. Tate

They were delivered to her at that time. The witness

went there in her possession from the time she was

about two weeks before she died, which was

There is other evidence in this case which

was, James S. Tate, deceased, and the witness was

went to the hospital where James S. Tate, deceased, was

James, testified that she had been

the witness was not on August 10, 1904, James S. Tate

the witness was not on August 10, 1904, James S. Tate

that he was not on August 10, 1904, James S. Tate

was not on August 10, 1904, James S. Tate

and James was not on August 10, 1904, James S. Tate

was not on August 10, 1904, James S. Tate

was not on August 10, 1904, James S. Tate

was not on August 10, 1904, James S. Tate

notes. The record of the Bank, showing the withdrawal of the money on this date, is in the record, so that there is no question but that Mrs. Totz paid for the two mortgages out of her own money she had on deposit in the bank. The witness further testified that in the early spring of 1931, Mrs. Totz and her daughter, Mrs. Schmidt, called at the bank; that the witness did not know Mrs. Schmidt until that time; that Mrs. Totz "requested that the mortgages that she purchased in her name should be changed to read from Mrs. Bertha O. Totz to Edythe Schmidt, her daughter;" that Mrs. Schmidt was requested to sign a card "so she would have authority to cash the mortgage?" The witness produced from the records of the bank a written memorandum showing the sale of the mortgages to Mrs. Totz which contained the signature of Bertha O. Totz, and this record shows that the owners of the mortgages were Mrs. Bertha O. Totz or Mrs. Edythe Schmidt, her daughter; and that Mrs. Schmidt's name was written on at the time and Mrs. Schmidt was requested to sign her name so they would have her signature, which was done, as the record before us shows. The witness also produced two other records of the bank, one showing the Olsen mortgage and the other the Obinger mortgage. On each of these appeared the name of "Mrs. Bertha O. Totz, or Mrs. Edythe Schmidt, daughter," the latter name having been typewritten on the record at the time of the call of the two women at the bank.

The witness further testified that Mrs. Totz had the mortgages with her at the time because she thought there would have to be some endorsement of them but was advised by the witness this was unnecessary; that Mrs. Totz produced the mortgages and afterward put them in her purse and took them with her; that the purpose of having the name of the owner of the mortgages written on the records of a bank was that in case the mortgages were paid or any part of them, to the bank, it would not turn over the money except to one

The first of these is the fact that the
 second of these is the fact that the
 third of these is the fact that the
 fourth of these is the fact that the
 fifth of these is the fact that the
 sixth of these is the fact that the
 seventh of these is the fact that the
 eighth of these is the fact that the
 ninth of these is the fact that the
 tenth of these is the fact that the

whose name appeared on the records as the owner of the mortgage.

Mrs. John Block, called by Mrs. Schmidt, testified she was well acquainted with Mrs. Totz; that the witness had worked for Mrs. Schmidt in selling hats for about three years and that Mrs. Totz also worked in the store for the daughter; that the mother and daughter were very friendly; that in the spring of 1931, the witness was employed in a department store in the vicinity of the Humboldt State Bank; that one day about noon in the spring of 1931 she saw Mrs. Totz come out of the bank with her daughter, Mrs. Schmidt, and the daughter's husband, Mr. Schmidt; that she spoke to Mrs. Totz and Mrs. Totz said she had done something that day that she had been wanting to do for a long time; that she had signed over some mortgages to her daughter, Mrs. Schmidt; she said, "You know I have not been well and I have been wanting to do this for some time and have it over with;" that the conversation was in April or May, 1931.

At the beginning of the hearing of the case, counsel for the administratrix of the estate of Louis H. Totz, deceased, said: "I will ask to have Mrs. Edythe Schmidt called in this case as the Court's witness under the New Practice Act. The Court: Yes." Mrs. Schmidt was then sworn and examined by counsel for the administratrix, and in this court counsel for the administrator of the estate of Bertha O. Totz, deceased, refers to this witness as "The Court's witness." We think this is a misapprehension. Mrs. Schmidt was called apparently under Section 60 of the New Practice Act which permits an adverse party to call and cross examine a witness without being bound by what the witness says. On this examination Mrs. Schmidt testified that she claimed to be the owner of the mortgages; that her mother gave them to her about two weeks before her death; that the witness gave her mother nothing for the mortgages.

Counsel for the administrator, Burgess, in their brief say,

which were reported on the records of the hospital, and the
 Mrs. John Jones, called by Mrs. Jones, testified that she
 well acquainted with Mrs. Jones; that the witness was called to
 Mrs. Jones in calling Mrs. Jones about three years ago and
 that she was in the state of the hospital; that the witness
 that she was with Mrs. Jones in the hospital at that time
 witness was employed in a hospital where he was visiting at the
 hospital where Mrs. Jones; that she saw Mrs. Jones in the state of the
 the Mrs. Jones, that she was at the time of the hospital, and
 hospital, at the hospital's hospital, at the hospital; that she was
 Mrs. Jones and Mrs. Jones said that she was acquainted with Mrs. Jones
 she had been working at the time of the hospital; that she was
 over some portions of her hospital, Mrs. Jones; that she
 knew I have not been well and I have been coming to the hospital
 some time and have it ever with; that the witness was in
 April 10, 1901.

At the beginning of the trial of the case, the witness
 the witness of the state of the hospital, and the witness
 "I will see to have the hospital where the witness was in
 Mrs. Jones's witness was the witness of the hospital, and the
 witness was from the hospital of the hospital of the hospital
 and in this case the witness of the hospital of the hospital of
 Mrs. Jones, witness, witness to the witness of the hospital
 witness." The witness is a witness of the hospital, and the witness
 called upon the witness of the hospital of the hospital of the hospital
 witness in the hospital of the hospital of the hospital of the hospital
 called upon by the witness of the hospital of the hospital of the hospital
 witness testified that she was in the state of the hospital
 that she was from the hospital of the hospital of the hospital
 that the witness was the witness of the hospital of the hospital

"Mrs. Totz, previous to her death, was sick off and on for about eight or nine years, suffering from heart trouble and having frequent attacks of same. She died intestate January 2, 1933, at the age of fifty-nine, leaving as her only heirs at law, Louis H. Totz, her husband, Edythe Schmidt, her daughter by a former marriage, and Ethel Steinbrechter, a granddaughter, and a daughter of her son, Charles, by a former marriage, who died previous to the death of his mother. Mr. Totz died intestate on June 2, 1933, at the age of sixty-five."

The evidence further shows that Mrs. Totz kept possession and control of the mortgages from the time she purchased them until she delivered them to her daughter about two weeks before her death, and that on August 2, 1932, more than four months before Mrs. Totz died, she executed an extension agreement with the then owners of the property on which the \$3300 mortgage was a lien, whereby the time of payment was extended for a period of three years from that date. In this agreement Mrs. Totz^{is} stated to be the owner of the mortgage.

Elizabeth Carstens testified she had known Mrs. Totz since they were children; that she knew Mr. Totz for more than twenty years; that Mrs. Totz had been afflicted with heart trouble and dropsy for a number of years before she died; that about November, 1932, she called on Mrs. Totz at her home; that while she was there a man and woman called and paid Mrs. Totz some money on a mortgage, \$100; that Mrs. Totz gave them a coupon; that Mrs. Totz went into the bedroom to get the mortgage.

Jergens Brink testified that he was a carpenter and contractor; that he knew Mrs. Totz and had business dealings with her; that he paid her a note which was secured by a mortgage on his property, being one of the properties in question; that he paid the interest

at her home; that Mrs. Totz went into another room and came out with the interest coupon. He thought this was about Christmas 1932.

Henry M. Abrahamson, an attorney, who formerly represented some of the parties, testified that he knew Mr. and Mrs. Totz in a business way; that he prepared the extension agreement whereby the time of payment of one of the mortgages was extended, as above stated, and that it was executed by Mrs. Totz; that about the middle of January, 1933, which was shortly after Mrs. Totz's death, Louis Totz, Mr. and Mrs. Schmidt and some others were waiting at his home to see him; that at that time Louis Totz accused Mrs. Schmidt of stealing the mortgages and Mrs. Schmidt said the mortgages had been given to her.

There is considerable other evidence in the record, but we think it would serve no useful purpose to detail it further. The court saw and heard ^{the} witnesses testify and was in a much better position to determine the truth of the matters in controversy than we are, sitting in a court of review. He found, in effect, that Mrs. Totz made a gift of the mortgages to her daughter, Mrs. Schmidt, and upon a careful consideration of all the evidence in the record, we are unable to say that his finding is against the manifest weight of the evidence.

The undisputed evidence is that Mrs. Totz bought and paid for the two mortgages out of money she had on deposit in the Humboldt bank; that in the spring of 1931 she called at the bank and requested that the mortgages she had purchased should be changed from her name to that of her daughter, Mrs. Schmidt, and the records were changed by the representative of the bank, as above stated; that Mrs. Totz kept possession of the mortgages and Mrs. Schmidt testified that her mother gave her the mortgages about two weeks before her death and she has kept possession of them from that time until they were delivered by her to the owners of the

of his house; that was his mother's room and was the
with the interior covered. He thought this was about 1900.
Henry H. Linschmeier, an attorney, who I recently contacted
some of the parties, testified that in 1900, his wife is a
business way; that he prepared his business accounts without the
first of papers of one of his daughters and children, as shown
related, and that it was amended by him. This, however, was
estate of January, 1907, which was changed to 1900. This is
death, Louis Tate, Sr. and his daughter and son should have been
ing to his home in the city; that at that time there was a
was. He noted at receiving the mortgage and had. He noted with the
and was not even given to him.

There is considerable doubt whether the witness is a competent person to give evidence in this case, and it is not clear whether the witness is a competent person to give evidence in this case, and it is not clear whether the witness is a competent person to give evidence in this case.

[illegible]

two properties in consideration of the conveyance of the properties to Mrs. Schmidt. Both parties stipulated that this conveyance should not affect the rights of the parties. We think this evidence was sufficient to warrant the court, if he believed the witnesses, in finding that Mrs. Totz had made a gift to her daughter of the two mortgages.

We think there was no error in the action of the trial court in permitting Mrs. Schmidt to amend her pleadings after the evidence was heard so as to conform to the evidence.

When Mrs. Carstens was testifying, as heretofore mentioned, in response to a question she stated that on December 7, 1932, Mrs. Totz told her that her daughter, Mrs. Schmidt, called and wanted to borrow some money to go into business and that she had not made up her mind whether she should let her have the money. Upon objection by counsel for Mrs. Schmidt the answer was stricken and counsel for the administrator contends this was error; that if the answer were permitted to stand it would tend to show, in view of the answer of the witness, that it would be unreasonable to believe that shortly thereafter Mrs. Totz made a gift of the mortgages to her daughter. We think the court should have permitted the answer to stand but are of opinion that the error was not of such a character as would warrant us in disturbing the judgment. The answer would have thrown but very little light on the subject in controversy and was not of much probative value.

Complaint is also made that the court erred in refusing to permit the complainant, the administratrix of the estate of Louis R. Totz, deceased, to testify. This witness produced an inventory, which she filed, of the estate of Louis R. Totz, deceased, and testified that it showed all the property she was able to find belonging to his estate. It was objected that this witness was incompetent under the Evidence act and the objection was sustained. Counsel

The proposition is consideration of the management of the corporation
 in the hands of the corporation. The corporation is a legal entity
 and is not a natural person. It is not a citizen of any state.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.
 It is a corporation organized under the laws of the state of New York.

then offered to prove that on January 2, 1933, Louis R. Tetz, Mrs. Schmidt, her husband, and the witness were present, and the witness would testify that at that time "Louis R. Tetz stated that the night or day before the deceased died he had the mortgages in his hand," and that Mrs. Schmidt "did not then claim that she owned the mortgages." The court sustained objections and it is claimed this was error. We think the witness should have been permitted to testify, Barnea v. Marie, 275 Ill. 331, but the error was not of such a character as would warrant a reversal. The offer did not purport to show that Louis R. Tetz was claiming he owned the mortgages or was making any contention that they had not been given to Mrs. Schmidt. It might be that when the mortgages were given to Mrs. Schmidt, as she testified, she put them back in the place in which they were kept and that Mr. Tetz found them and had them in his hands, as the witness offered to testify.

We think we ought to say that the court should have permitted Mrs. Schmidt to testify when she was called as a witness in her own behalf. She had theretofore been cross examined under Sec. 60 of the Practice act by counsel for the other side. Therefore her own counsel should have ^{been} permitted to put her on the stand. Seane v. Youngs, 281 Ill. App. 339.

The decree of the Circuit court of Cook county is affirmed.

DECREE AFFIRMED.

McSurely, P. J., and Matchett, J., concur.

E. FANELLI,
Appellee,

vs.

WILLIAM BURKE HARMON, FRANK W.
BLANKLEY; and WILLIAM BURKE
HARMON, BENNETT MILNOR, ARTHUR
T. LYMAN and RUSSELL TYSON as
Trustees acting under the designation
of HARMON NATIONAL REALTY TRUST,
Appellants.

APPEAL FROM CIRCUIT
COURT OF DEER COUNTY.

382 I.A. 641²

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit against the defendants to recover \$22,500 he claimed to be due him for commissions earned as a real estate broker in selling 100 acres of land to defendants. His contention is that the commissions were payable to him from the sellers; that he had assigned the commissions to defendants pursuant to an oral agreement whereby defendants were to employ him as sales manager to resell the land when subdivided, for which he was to be paid commissions; that defendants refused to carry out the agreement and he therefore rescinded the agreement and was entitled to recover the \$22,500.

Plaintiff dismissed the case as to Frank W. Blankley and the court directed a verdict in favor of defendant William Burke Harmon. There was a verdict and judgment against the remaining defendants for \$15,750, and defendants appeal.

The record discloses that plaintiff was a licensed real estate broker and from time to time had been selling real estate for defendants for which he was paid commissions; that defendants' main office was in New York City, with a branch office in Chicago under the management of Frank W. Blankley; that about August or September, 1927, plaintiff learned there was a tract of about 100 acres (now known as New Roseland) which was fit for subdivision purposes and was for sale by the owners. He got in touch with W. E. Young, another real estate broker, with whom the property

was listed for sale, and brought the owners and defendants together in September, 1927, which resulted in a sale of the property to defendants for \$450,000 or \$4500 an acre.

Plaintiff's claim is that he had an oral agreement with the owners of the property and their broker, Young, by which the owners were to pay plaintiff a commission of 5% in case he obtained a purchaser; that Frank E. Blankley, who was in charge of defendants' Chicago office, was apprised of this fact; that after the property was sold to defendants he entered into another oral agreement with them whereby he was to assign his commissions of \$22,500 to defendants and in consideration thereof they were to employ him to recell the property and pay him certain specified commissions; that in accordance with this agreement he assigned his claim for commissions against the owners of the property to defendants; that afterward defendants refused to employ him as sales manager but that he was employed by defendants merely as a "crew manager" with about eleven other crew managers who were likewise engaged in selling the property; that defendants, having failed to carry out their oral agreement, plaintiff rescinded the assignment of his commissions and brought suit to recover them.

Defendants denied that there was any oral agreement between plaintiff and the owners of the property whereby plaintiff was to receive a commission of 5% for selling the property, but say that on the contrary the first knowledge they had that plaintiff was to receive a commission from the owners of the property for what he did was when the written contract of sale, by which the property was sold by the owners to defendants, was executed wherein it is stated that the owners are to pay a commission of 2%, one-half of which was to be paid plaintiff, and the other half to the broker, Young.

Defendants further denied that plaintiff entered into an

was listed for sale, and through the agency and settlement for
 together in September, 1911, which resulted in a sale of the prop-
 erty to the American Land Company, Inc. at \$100,000.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

Thereafter the title is held by the American Land Company, Inc.
 the owners of the property are the American Land Company, Inc. and the
 owners were to pay annually a commission of 5% on the net profit.

oral contract with them whereby, in consideration of his assigning to defendants his claim for the commissions earned in obtaining a purchaser for the property, they would employ him as sales manager to resell the property for them. William Burke Harmon, one of defendant trustees, who seems to have been in charge of the matter in defendants' New York office, testified that prior to the sale plaintiff came to New York and talked with the witness about the sale and purchase of the 100 acres; that he discussed with plaintiff the question of plaintiff assigning to defendants his commissions for the sale of the premises. "I told him he would have to assign the commission paid on the original sale from the owner of the acreage to us. Assign that commission to us, and I told him that was the customary way we did business when we made a large investment on a piece of property. Of course, we knew there was a commission paid, and that had to be returned to us." He further testified that he prepared the assignment which is in the record, executed by plaintiff, and that subsequently defendants collected from the owners one-half of the commissions, which was \$6776. Apparently an equal amount was paid by the owners to their broker, Young.

Defendants' position, as stated in their brief, is that when they decided to purchase the 100 acres "upon becoming aware of the fact that the plaintiff might receive a commission in connection with said sale, the defendants insisted, in accordance with their established custom when a commission was received by one in their employ, that such commission be assigned to the defendants;" that plaintiff assigned his commissions to defendants, as a result of which defendants were paid by the owners of the 100 acres the commission of \$6776.44, and that in consideration of the assignment by plaintiff, defendants entered into a written contract with plaintiff whereby he was to be employed by them in the resale of the property, and that plaintiff worked under this agreement for a period of two

and continued with them actively, in consideration of his services
to determine his claim for the commission which he was entitled
to receive for the property, they would surely not be so much
to settle the property for him. William Henry Brown, one of the
Federal officers, who claims to have been in charge of the matter in
Philadelphia, New York office, testified that after he had taken
first came to New York and talked with the witness about the matter
proposed at the first meeting; that he discussed the matter with
question of liability resulting from the commission which he was
able of the premises. "I said that he would have to settle the com-
mission with the witness and the witness said that he would
be. I said that I would be glad to see him and he said that he
would see me at his business place and make a final settlement as to
the property. Of course, we have been in a position to
and that he is to be retained in New York. He has been retained and he
retained the settlement which is in the hands of the witness, I believe
him, and that settlement is being retained from the witness
one-half of the commission, which was \$1000. I am not sure of the
amount was paid by the witness to the witness, I believe.

Philadelphia, testified, as stated in the first report, in that
when they decided to purchase the land they were retained by
the fact that the plaintiff's agent retained a commission in connection
with said sale, the defendant testified, in connection with said
retained matter when a commission was retained by him in that
matter, that such commission is retained by the defendant, and
plaintiff retained his commission in Philadelphia, as a result of
which defendant was paid as the result of the fact that the com-
mission of \$1000.00, and that in consideration of the defendant's
services, defendant retained said \$1000.00 and retained with plaintiff
plaintiff he was to be retained by him as the result of the property,
and that plaintiff would retain this agreement for a period of ten

years in reselling the property which had been subdivided, and was paid in commissions by defendants more than \$23,000.

Plaintiff testified that he had an oral agreement with the owners of the 100 acres, whereby he was to be paid by them in case he obtained a purchaser for the acres, 5% of the purchase price. This is denied by the owners, and the evidence offered by them is to the effect that the first the owners learned that plaintiff was to be paid a commission was when the written contract for the sale of the property was entered into between them and defendants. This contract is in evidence, from which it appears that the owners of the property agreed to pay a commission of 1 1/2% to plaintiff and a like amount to their broker, Young. There is also in evidence a letter written by defendants to plaintiff, about the time of the purchase by them of the property, in which it is stated that plaintiff is to be employed by defendants to resell the property, certain specified commissions are therein stated, and the time fixed when they are to be paid by defendants to plaintiff. This letter is "approved" by plaintiff. There were two subsequent written agreements entered into between plaintiff and defendants in which plaintiff was to act as agent for defendants in the resale of the property in question, one dated October 29, 1927, and the other dated December 17, 1928. In neither of these is it stated that plaintiff is to be employed as a sales manager, but as "crew manager," and plaintiff does not rely upon this contract but claims that his agreement was an oral one. His testimony is at variance with these written documents and we think the verdict of the jury in his favor, to the effect that an oral agreement was entered into whereby he was to be employed by defendants to resell the property, is clearly against the overwhelming weight of the evidence.

We are also of opinion that the overwhelming weight of the evidence is that the owners of the 100 acres did not orally

[illegible]

agree with plaintiff to pay him 5% of the selling price of the property in case plaintiff should obtain a purchaser. Plaintiff's own testimony is to the effect that he talked to Young, who was the broker for the owners, and we think it is clear that if the property were sold partly through the efforts of plaintiff, as the evidence indicates, Young would be entitled to a part of the commissions. And the written contract between the owners and the defendants for the purchase and sale of the property bears out this fact because in that agreement it is stated a commission of 3% is to be paid by the owners for the sale of the property, one half of which is to go to the plaintiff and the other half to Young. It seems strange that if plaintiff had \$22,500 coming to him, as commission for the sale of the property, he would assign it to defendants in consideration that they continue to employ him in the resale of the lots.

While what we have said requires a reversal of the judgment, we think we ought to say that there was no error in the court permitting plaintiff and the witness Martello to testify to conversations had with Young, defendants' broker, although Young had died prior to the date of the trial. Plaintiff had a right to show what he did toward obtaining a purchaser for the property. For the same reason, the Court did not err in permitting the testimony of what was said between plaintiff and defendants' Chicago representative, Blankley.

For the reason that the verdict and judgment are against the overwhelming weight of the evidence, the judgment is reversed and the cause remanded.

JUDGMENT REVERSED AND CAUSE
REMANDED.

McSurely, P. J., and Hatchett, J., concur.

38340

MARY A. RUSSELL,
Appellee,

vs.

GLOBE MUTUAL LIFE INSURANCE
ASSOCIATION OF CHICAGO, a Corporation,
now known as Globe Life Insurance
Company, a Corporation,
Appellant.

APPEAL FROM SUPERIOR
COURT OF CHICAGO COUNTY.

282 I.A. 641³

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

On October 18, 1934, Mary A. Russell brought suit against the defendant on an insurance policy issued by it to plaintiff's husband, William T. Russell, in which plaintiff was named beneficiary, to recover \$1,000, the face of the policy. There was a trial before the court without a jury, a finding and judgment in plaintiff's favor for the amount of her claim, and defendant appeals.

The record discloses that on December 29, 1919, the defendant insurance company issued its policy insuring the life of William T. Russell of Chicago for \$1,000, in which his wife, the plaintiff, was named as beneficiary. The basis of plaintiff's claim is that the insured left his family and home in Chicago and has not been heard of for more than seven years. The defendant's position, as stated by its counsel, is that the policy is not in force and effect because there was a reservation in the policy that the insured might change the beneficiary without the beneficiary's consent, and that about March, 1927, the insured, William T. Russell, filed an affidavit with defendant in which he swore that the original policy was lost. He requested a new policy and that the beneficiary be changed from his wife to his sister, Mrs. Virginia Godall; that defendant complied with this request, issued a new policy to Russell, and that such policy is still outstanding.

The facts, in short compass, are that on October 8, 1907,

the insured, William T. Russell, was married to plaintiff and they lived together for about ten years in a suburb of Chicago. They afterward lived in Kankakee, Illinois, later coming to Chicago. There were two children born as a result of the marriage. About September, 1926, Russell left his family and has not lived with them since. January 23, 1927, in response to an "ad" printed in the Chicago Tribune by Mrs. Russell, Russell wrote his wife a letter which was mailed in Cicero, in which he spoke about a division of their property between them, the principal part of which was a home in Chicago. In the letter he states that the building should be painted so that they could obtain a better price for it; that he thought they ought to have at least \$3500 for it and that he should receive one-half of what was left of the sale price after deducting what he expected to expend for fixing up the place. He further said: "I have been very careful this time about going to see anyone you are acquainted with but if you want to answer this in any way leave it with Heathc and the next time I am close in I will drop by and pick it up. I owe them some money and will have to see them anyway as I haven't seen them since I left. *** If you care to you might tell Silvers (their daughter) I haven't forgotten her even though I don't come to see her. If I don't hear from you I will call you up or write you again before the weather opens up." March 10, 1927, plaintiff received a letter from her husband's lawyers asking her to call at their office, which she did shortly thereafter, and was advised that the husband wanted her to obtain a divorce from him, which she refused to do.

On the hearing counsel stipulated that Mrs. Virginia Odell, sister of William T. Russell, the insured, who lived in Los Angeles, California, would testify that the insured, her brother, came to Los Angeles about the last of March or the first of April, 1927, and lived with her. For a time he worked in the State Hospital at

Newark (apparently a suburb of Los Angeles) and that he later went into business in Los Angeles but failed; that a few months after he came to live with her at Los Angeles he bought a second hand Buick automobile and stated he "was going to drive to the East coast, and left about the latter part of June or by the 1st of July, 1927," and that for the first few years after he left Los Angeles she received numerous letters from his creditors and from attorneys asking as to his whereabouts; that he told her while in Los Angeles that she was the beneficiary in an insurance policy on his life; that if he were living at the time of the trial she was of opinion he was living under an assumed name; that she had not seen or heard from her brother from the time he left, as above stated, and does not know of anyone who had heard from him; that when he left he was angry with her because she asked him to repay a loan of \$200 she had made to him. The evidence further shows that in May, 1928, the daughter, Eileen, sent her father "a Father's Day card" by registered mail, addressed to him at his sister's address in Los Angeles, but it was returned and the envelop is in the record.

Mrs. Russell testified that in 1931 she went to California and tried to locate her husband; she visited his sister there, who told her she did not know where he was, that she did not know anyone who knew where he could be found; she further testified that when he was in Chicago his last job was with the Western Electric Company; that he had asthma very bad, and had had an operation, five altogether; that during the time they were married he gave her some money but did not support her; that she worked almost all the time; that about July, 1934, she obtained a default divorce from her husband in Chicago in the Superior court of Cook county, so as to clear up the title to the real estate owned by them; that during their married life their relations were not entirely pleasant; that

[illegible]

Q. Now, I believe that you were in Chicago in the summer of 1937, is that right?

he left her three times before the last one; once he stayed about a year, another time three months and another time three or four months. At the time of the trial the daughter Sileen was nineteen years old and the son Clifford about five years older. She further testified that the only relatives of her husband, so far as she knew, were Mrs. Gedall, a half sister, one cousin and his mother; that the mother died six weeks after her husband left Chicago; that both his parents were dead; that she interviewed Mrs. Gedall and the cousin and mutual friends as to his whereabouts but found no trace of him, except as above stated; that she also interviewed friends who lived at Waukegan but found no trace of him.

Plaintiff further testified that in January, 1927, she talked to Mr. Murphy, an insurance man from whom she obtained the policy; that at that time she was working as a waitress on the west side of Chicago; that she told Mr. Murphy to stop in as she wanted to pay the premium; that in the spring of 1927 she went to the office of the defendant insurance company and had the policy with her and talked to a Mr. Hoey, representative of the company there; that she showed him the policy; that he asked her if she wanted to keep up the insurance and she told him that she did; he told the witness her husband had asked for a new policy and wanted to change the beneficiary because he said his wife was dead; that Hoey told her the duplicate policy which had been issued would be null and void as long as the original one was kept in existence and the premiums paid. The witness further testified that about 1931 she went down to the office again and saw Mr. Hoey; that she had the policy with her and asked if she could borrow \$40 on it and was told this could not be done without Mr. Russell's signature; that she told them she did not know where he was; "he said if I would keep on paying it, when the seven years was up, it would be collectible. I told him Mr. Russell had disappeared."

[illegible]

... ..

[illegible][illegible]⁴ *Journal of the American Statistical Association*, 93(464), 1038.

The daughter, Eileen, testified that she was living with her mother; the last time she saw her father was in September, 1926; that in 1929 she mailed her father the card above mentioned and that year his birthday fell on Father's Day; that she had not heard any thing about her father since January, 1927, when a neighbor told her she had seen him.

The son, Clifford Russell, testified that the last time he saw his father was in August, 1926; at that time he left home because his father "drank quite a bit" and that they could not get along together; that he did not know of anyone who had heard from his father since March, 1927.

Mr. Kasey testified that he had never seen Mr. Russell but thought he had seen Mrs. Russell before; that Burnby was the agent who wrote the original policy; that he did not know who paid the premiums on the policy and did not remember having a conversation with Mrs. Russell about it.

Other witnesses who knew the Russells testified to the effect that they had not seen nor heard of Russell for many years, and the evidence shows that July 16, 1934, plaintiff's counsel wrote defendant advising that he held the policy for collection, that the assured, William T. Russell, had disappeared more than seven years before, and that his wife had not heard from him since, although she had made inquiries. Defendant's attorney replied in this letter on August 8th, saying, among other things, that they were making an investigation concerning the disappearance of Russell and on August 15, 1934, they wrote another letter in which they advised plaintiff's counsel that the beneficiary had been changed as requested by Russell, and a new policy issued, because he said the old one had been lost. The evidence further shows that the attorney representing defendant endeavored to locate Russell, but without success.

THE UNIVERSITY OF CHICAGO, CHICAGO, ILLINOIS 60637-7070

[illegible]

1. The first condition is that the person must be a citizen of the United States.

[illegible]

Defendant contends that by the terms of the policy the insured, William T. Russell, reserved the right to change the beneficiary without her consent and that Russell having done so, and a new or duplicate policy having been issued to him in which the beneficiary was the insured's sister, Mrs. Odell, the original policy was void; that the provision of the policy providing that the change of beneficiary should take effect "only upon endorsement of the same upon the policy," was inserted for the benefit of the insurance company, and the fact that the endorsement was not made on the original policy is immaterial in the instant case.

Counsel for plaintiff take the position that since there was no endorsement on the policy of the change of beneficiary, the attempted change was ineffective. Obviously, if the policy were lost or destroyed, the endorsement of the change of beneficiary could not be made upon it, but we think this would not prevent the company from issuing a new or duplicate policy with the beneficiary changed, if the provisions of the policy were followed. But we think the question is immaterial here because the court might well believe from the evidence that Mrs. Russell, in the spring of 1927, took the matter up with the defendant's agents as she testified, and which is not denied, and was advised by them that if she kept up the premiums, the policy issued and which she held, would be good; and she, having paid the premiums for a number of years, defendant is now attempted to say that the policy is void because of the issuance of the new or duplicate policy, as above mentioned. There is no contention that anyone has paid any premium on the new or duplicate policy.

Defendant further contends that the evidence is insufficient to warrant the court in finding that the presumption of the death of William T. Russell has arisen in this case; that such presumption does not arise here where the "insured was on unfriendly terms with

his family and had on prior occasions deserted them without accounting for his whereabouts or communicating with them," and that the evidence shows that it was apparent that the insured when he left had no intention of returning. We had occasion to consider a similar question in the case of Fieracl v. Mass. Mut. Life Ins. Co., 260 Ill. App. 373. In that case the insured lived at Danville, Illinois, at the time he left his home. He had been working for an express company and it was found shortly prior to his leaving that he was short in his accounts, which were being audited by the company about ten days before he left. A few days after he left he was indicted by the grand jury in the Federal court and has never been heard of since. We held that no one having heard from the insured for more than seven years, the question whether his death would be presumed was a question of fact. We there said (p. 325): "Again, defendant says that plaintiffs failed to prove that at the time the insured left his home he intended to return within a short time; further, that the reason for the absence of the insured was explained by the condition of his accounts and the indictment returned against him, and that no presumption of death would arise for these reasons. Kennedy v. Modern Woodmen of America, 243 Ill. 560, and Gayton v. Equitable Life Assur. Society, 248 Ill. App. 432, are cited. We have carefully examined these cases but do not understand the holding to be as defendant contends. It is true in the Kennedy case there was proof tending to show that the insured at the time he disappeared intended to return in a short time, and the opinion (quite naturally) included that fact in its statement of the rule applicable, but the language used does not, in our opinion, warrant an inference that the presumption of death could not arise in any case where the insured left home without intending to return. The decisions of our Supreme court before as well as after the Kennedy case, show that

the family and had no other persons besides the children and
sister for his household or communication with them," and
that the evidence shows that it was known that the mother
when he left had no intention of returning. He had intended to
reappear a similar question in the case of William J. Hamilton.
Life Ins. Co., New York, N.Y. He was given the license to
at Hamilton, Illinois, at the time he left the house. He was
working for an insurance company and he was working very hard
his leaving home he was away in the city, which was being
evidenced by the company about ten days before he left. A few days
after he left he was located by the same day in the company
house and was never heard of since. He told that he was
having heard from him located for some time before he
question whether his death would be a question of a question of
fact. He then said (p. 25): "Again, I am sure that I have
little failed to give out of the fact that I have been in
intention to return within a short time, but the reason
for the absence of the interest was explained by the insurance
his absence and the insurance company advised him, and that he
proposition of death would arise the same reason. William J. Hamilton.
Hamilton Insurance Co. New York, N.Y. and William J. Hamilton.
Life Ins. Co. New York, N.Y. He was working for the same
insurance house and he was working and working as he was in
Hamilton, Illinois. It is true in the Hamilton case that the fact
failed to show that the interest of the fact as it appeared in the
to return in a short time, and the evidence (which is not in the
evidence that fact in the statement of the wife Hamilton, but the
insurance was not in, in any other, without an intention to
the proposition of death could not arise in any case where the in-
terest fact was not intended to return. The statement of the
Hamilton case failed as well as after the Hamilton case, but the

this interpretation of the rule has not been accepted. Whitton v. Nicholl, 46 Ill. 230; Johnson v. Johnson, 184 Ill. 611; Geddy v. Millisen, 185 Ill. 636; Stevenson v. Montgomery, 263 Ill. 93; Keystone Steel & Wire Co. v. Industrial Commission, 259 Ill. 587; Eddy v. Eddy, 302 Ill. 446."

In the instant case the insured had not as strong a reason for not returning as the insured in the Piersol case. Following the rule stated in that case we hold, in the instant case, that whether death of the insured would be presumed was a question of fact for the court. The court having found in favor of plaintiff, we are unable to say that the finding is against the manifest weight of the evidence.

Defendant further contends that since the policy limited the time within which suit must be brought to six months from the date of death of the insured, no recovery can be had because the suit was not brought until more than six months after the time when the death was alleged to have occurred. It is alleged in the complaint that the insured disappeared "on or about the 11th day of March, 1927" and the suit was not brought until October 15, 1934, but the evidence is to the effect that Russell was last seen by his sister in California the latter part of June or the first of July, 1927, and the suit was brought within six months from the time he was last seen. It was not pointed out on the trial that there was any variance between the allegations and the proof, nor is there any such argument made in the brief filed by defendant.

Defendant further contends plaintiff failed to prove she had made proof of loss as required by the policy. But we think this contention is without merit. While no formal blanks, which are ordinarily used, were filled out, the defendant was advised by a letter from plaintiff's counsel she was claiming the face of the policy because the insured had disappeared and had not been heard from for more than seven years.

The judgment of the Superior court of Cook county is affirmed. McSurely, P.J. and Hatchett, J., concur. JUDGMENT AFFIRMED.

THIS INFORMATION IS TO BE USED FOR THE PURPOSES OF THE
BUREAU OF THE ARMY AND THE AIR FORCE ONLY. IT IS NOT TO BE
DISSEMINATED TO THE PUBLIC OR TO OTHER AGENCIES WITHOUT THE
APPROPRIATE AUTHORITY. IT IS THE PROPERTY OF THE ARMY AND THE
AIR FORCE AND IS TO BE KEPT SECRET. IT IS TO BE DESTROYED
WHEN NO LONGER REQUIRED FOR THE PURPOSES OF THE BUREAU OF THE
ARMY AND THE AIR FORCE.

[illegible]

1. The first of these is the fact that the defendant was not present at the time of the shooting. The second is the fact that the defendant was not present at the time of the shooting. The third is the fact that the defendant was not present at the time of the shooting.

The following is a list of the names of the persons who were present at the meeting of the Board of Directors of the American Telephone and Telegraph Company, held on the 10th day of December, 1908, at New York City, New York:

38378

MARGARET BROWNE,
Appellee,

vs.

WILLIAM RODGERS, Administrator
of the Estate of BERNICE RODGERS,
Deceased,
Appellant.

APPEAL FROM CIRCUIT COURT
OF COOK COUNTY.

222 T 1.641

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Margaret Browne, who will be hereafter referred to as plaintiff, had in her possession a certificate for five shares of stock of the American Telephone and Telegraph Company, of the par value of \$100, which had been issued to the deceased, Bernice Rodgers, her sister; it bore the endorsement of Bernice Rodgers, by which the certificate was assigned to plaintiff, Margaret Browne. Bernice Rodgers died December 1, 1933, and her estate was being probated in the Probate court of Cook county. Plaintiff made a motion in that court that an order be entered finding that the stock belonged to her and ordering the administrator to perform any and all acts necessary to enable plaintiff to secure the transfer of the stock by the Chicago Telephone and Telegraph company. The Probate court heard the evidence and entered an order in plaintiff's favor as she had requested. An appeal was taken by the administrator to the Circuit court of Cook county, where there was another hearing, a similar judgment was entered, and the administrator appeals.

Plaintiff's claim is that her sister, Bernice Rodgers, made a gift to her on November 15, 1933, of the five shares of stock; the administrator's position is that the evidence is insufficient to support plaintiff's contention.

The record discloses that for a number of years Bernice Rodgers was employed by the Illinois Bell Telephone company as a telephone operator and was so employed until her death; that

Marcella Daley was also employed by the Telephone company as an operator, lived near Bernice^{Rodgers} and was a very close friend of hers; that for some time prior to December 1, 1933, Bernice Rodgers had lived separate and apart from her husband. Plaintiff, Margaret Browne, was a sister of deceased and lived in Chicago some distance from her; that Bernice Rodgers became ill, a surgical operation was necessary, and on Sunday, November 26, 1933, she went to the hospital for that purpose. The operation was performed and she died December 1st.

The certificate for the five shares of stock is in the record and on the back appears the following: "For value received I hereby sell, assign and transfer unto sister Margaret Browne five shares *** Dated 18th November, 1933, (signed) Bernice Rodgers in presence of Bernice Talty. Subscribed and sworn before me this 18th of November, A. D. 1933. Scott H. Dawney, Notary Public."

Margaret Browne, plaintiff, took the witness stand but, on objection, was not permitted to testify. Scott H. Dawney testified he was a notary public; that November 18th Mrs. Browne, the plaintiff, called at his office with a lady she introduced as Bernice Rodgers, her sister, and requested him to acknowledge Mrs. Rodgers' signature which was already on the certificate; that he asked Mrs. Rodgers, "Is this your signature?" and she replied "Yes." Thereupon he affixed his seal, signed his name underneath, and handed the paper back to plaintiff.

Bernice Talty, whose signature is on the back of the certificate, testified that she was a cousin of plaintiff and of Mrs. Rodgers; that she lived at the home of plaintiff; that she wrote her name on the back of the certificate at Mrs. Rodgers' request; that this was about three o'clock on the afternoon of November 18th; that Mrs. Browne and the witness were present at the time; that Mrs. Rodgers stated she had given the stock to her sister, Margaret

[illegible][illegible][illegible]

1. The first of these is the fact that the
2. second is the fact that the
3. third is the fact that the
4. fourth is the fact that the
5. fifth is the fact that the
6. sixth is the fact that the
7. seventh is the fact that the
8. eighth is the fact that the
9. ninth is the fact that the
10. tenth is the fact that the

Browne, and that she wanted Miss Talty to witness it; that Bernice Rodgers' signature was on the back of the certificate when it was presented to the witness and that she was familiar with the signature; that shortly thereafter, "Bernice Rodgers said to Miss Talty, 'Wouldn't it be better if she placed the stock in charge of Marcella Daley, who had worked for the Telephone company, and it could always be transferred easily.'"

Joe Sako, the milkman, testified he had delivered milk to Mrs. Browne's home for some time and in connection with his business had called at her home on the afternoon of November 24th to make collection; that Mrs. Rodgers, Mrs. Browne and Miss Talty were present; that Mrs. Rodgers handed a piece of paper to Mrs. Browne, "stating that it was hers and that she should keep it;" that he saw Miss Talty sign her name as a witness on the paper; that he was introduced to Mrs. Rodgers at that time but had not known her before.

Marcella Daley, called by the administrator, testified she had known Bernice Rodgers about six years and that she had met plaintiff about three times before Mrs. Rodgers died; that Mrs. Rodgers was taken to the hospital the Sunday before Thanksgiving and that as Mrs. Rodgers was getting ready to go to the hospital that day she left some articles, including the stock certificate, with the witness; the witness testified, "There were twelve shares of A. T. and T. stock, two diamond rings, the key to her flat, and I think \$35, and an old sealskin coat she gave me to throw over my knees taking her to the hospital, because I was in the rumble seat;" that when the articles were given to her by Mrs. Rodgers, "I said to her, 'Bernice, in case anything might happen to you, what shall I do with these things I am holding?' She said, 'Give them to my sister, Mrs. Browne.'" Mrs. Rodgers was then taken to the hospital and apparently operated upon and died December 1st, and on the same day the witness turned over the property she had received from

Bernice Rodgers, as above stated, to Mrs. Browne, taking her receipt therefor. Part of the property was the certificate for the five shares of stock in question.

Alice Curtin also testified for the administrator that she was a niece of Mrs. Rodgers and went to the hospital to see her two days before Mrs. Rodgers' death; at that time "I asked her if she had anything taken care of and she says 'in case I turn my toes up,' she says, 'I have five shares of stock to take care of me.'"

Patrick J. Clancy, the undertaker who buried Mrs. Rodgers, testified that Mrs. Browne made arrangements for the burial and gave him certificates for seven shares of stock of the Telephone company, "more or less as security for the bill;" that afterward his bill was paid and he turned the certificates for the seven shares of stock back to the court. It was stipulated that the administrator of the estate, by leave of court sold the seven shares and had the money in the bank.

Both the Probate court and the Circuit court held that Bernice Rodgers had made a gift of the five shares of stock to her sister, Mrs. Browne, and we think this was the only conclusion that was warranted by the evidence. It is certain that we are unable to say the finding is against the manifest weight of the evidence. The certificate of stock bore the genuine signature of Bernice Rodgers on the back and it purports to assign the certificate to her sister, Margaret Browne, on November 19, 1935. This is testified to by the notary public, a disinterested witness, who said that Mrs. Rodgers requested him to witness her signature as a notary public; that the certificate was handed to Mrs. Browne and she went away with it; Bernice Talty and Joe Sako both testified that on November 24th Mrs. Rodgers acknowledged her signature and said she had given the stock to her sister, and Miss Daley testified that on November 26th, which was the Sunday before Thanksgiving, just as Mrs. Rodgers was

Five copies of report in connection with the above.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

[illegible][illegible]

identified James Earl Ray. Brown made arrangements for the federal law
gave him authorization for seven months to travel in the United States
company, "which he used as security for the FBI." The following
his bail was paid and he returned the certificate for his return to the
it along back to the master. It was released from the government
for at the airport, he found an empty cell and went to the hotel and was
the money in the bank.

2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

also believe that there is a rift in the ranks of those who are
aligned, but, however, and we think that the only thing that
was mentioned by the witness, it is not clear that he was aware of
any the finding in regard to the matter of the witness, and
consequently of those who are known to be in the witness
on the part of the witness as being the witnesses in the case,
Margaret Brown, on November 1, 1911, who is located in the
city of Chicago, a registered witness, who has been
reported in the witness as a witness in the case, and the
witness was named in the witness and was named in the

James Earl Ray was born in Mississippi on May 19, 1928. He was a member of the Communist Party and was active in the civil rights movement. He was arrested in London in 1968 and charged with the murder of Dr. Martin Luther King. He was convicted and sentenced to death in 1969. He was later pardoned and released in 1990.

getting ready to go to the hospital, Mrs. Rodgers gave her the certificate of stock, together with other property, stating that if anything happened to her to give the property, including the certificate in question, to Mrs. Browne. And there is evidence to the effect that the reason for giving the certificate to Miss Daley was that Miss Daley worked for the Telephone company and for that reason it would be better for her to have the certificate for the shares of stock because they could be transferred more easily. There is no evidence to the contrary.

We think the evidence is sufficient to warrant the finding by the two courts that Mrs. Rodgers had made a gift of the stock to her sister, Mrs. Browne. Rothwell v. Taylor, 363 Ill. 226.

The judgment of the Circuit court of Cook county is affirmed.

JUDGMENT AFFIRMED.

McSurely, P. J., and Hatchett, J., concur.

The testimony of the witness is that the defendant was seen by the witness on the night of the murder, and that the witness saw the defendant with the victim at the time of the murder. The witness also testified that the defendant was seen by the witness on the morning of the murder, and that the witness saw the defendant with the victim at the time of the murder. The witness further testified that the defendant was seen by the witness on the day of the murder, and that the witness saw the defendant with the victim at the time of the murder. The witness also testified that the defendant was seen by the witness on the night of the murder, and that the witness saw the defendant with the victim at the time of the murder.

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

... ..

38394

JOSEPH MOODY,
Appellee,

vs.

LA MANTIA BROS. ARRIGO COMPANY,
A Corporation, and JOSEPH PAGLIUGLI,
Appellants.

APPEAL FROM SUPERIOR
COURT OF COOK COUNTY.

282 I.A. 642¹

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiff brought an action against the defendants to recover damages for personal injuries claimed to have been sustained by him through the negligence of defendants in stopping defendants' truck near the center of South Ashland avenue without having a tail light, as a result of which plaintiff's automobile, which was being driven south by him in Ashland avenue, ran into the rear end of the truck, injuring plaintiff. There was a trial before the court without a jury, a finding and judgment in plaintiff's favor for \$1000, and defendants appeal.

There is little or no conflict in the evidence as to the facts, the substance of which is that defendant Joseph Pagliugli, a chauffeur of many years experience, was driving a truck belonging to the other defendant south in Ashland avenue shortly after five o'clock the morning of October 20, 1934. He was delivering a load of vegetables to the Jewel Tea Company, whose place of business was on the east side of Ashland avenue about 100 to 120 feet south of 36th street in Chicago. It was dark at the time, the weather was clear and the street in good condition; the street lights were burning. Ashland avenue at this point is 69 feet 6 inches from curb to curb; there is a double line of street car tracks in the street; the east rail of the northbound track is 12 feet 3 inches from the east curb; and the ^{west} rail of the southbound track is 41 feet 6 inches from the west curb. Pagliugli was driving the truck, which was about 7 feet wide and 11½ feet high, south 3 or 4 feet west of the west

RECEIVED

RECEIVED

1000

RECEIVED

888 144 612

RECEIVED

RECEIVED

RECEIVED

rail of the southbound street car track. When he reached a point opposite the Jewel Tea Company's place of business he stopped the truck because the door to the Jewel Tea company's building, into which plaintiff intended to drive the truck, was not open at the time. He got out, walked east to the store to notify the Jewel Tea Co. that he desired to drive in with a load of vegetables, then returned to his truck and stood 3 or 4 feet behind it; he waited there about ten minutes, apparently for the Jewel Tea Co. to open its place of business so that he could deliver his load, and while doing so plaintiff, a South Park police officer who had been detailed that night at the Belgian Village of the World's Fair, was going home, driving his Pontiac automobile south in Ashland avenue, having entered that street about 4 or 5 blocks north of 36th street; he was traveling, as he testified, at about 25 or 30 miles an hour. He farther testified: "There was no traffic ahead of me at any time after turning into Ashland avenue until I reached the truck;" that he was looking at the warehouse (apparently the Jewel Tea Company's place of business on the east side of the street) "from about 36th street," which was about 100 or 120 feet from the standing truck; that the store "was plainly visible because it was a lighted doorway;" that he did not see the truck until he was about 10 feet from it, when he turned his car to the right in an endeavor to avoid the truck, but was unable to do so; that he did not see any lights on the truck; that "I did not apply my brakes when I saw this truck or at any time before I hit the truck." Plaintiff was rendered unconscious for a few moments and was then taken by an employee of defendant company to the hospital where he received first aid; he was then brought back to the scene of the accident where he got the name of the driver of the truck, Pagliugli. Plaintiff farther testified: "My bright lights were not burning at the time. My dim lights were. I could see about 30 feet straight ahead with these lights;" that his automobile, including the brakes, was in good

[illegible]

condition.

Ashland avenue was built up on both sides; there were street lights on each side of the street, all lighted at the time; there was a light 22 feet south of 36th street and the next light to the south was about 135 feet south of 36th street. There is a street car loading island west of the southbound street car track a short distance north of 36th street, which was lighted overhead, but we think these latter lights were of little or no benefit to plaintiff as he was driving south. There was little traffic in the street at the time.

George L. Holmes, a witness called by plaintiff, testified that he saw the accident; that he was driving south in Ashland avenue to his home and was about 500 feet behind plaintiff's car and a little to the east, traveling about 25 miles an hour; that he was from 75 to 100 feet behind him when they reached 36th street; that the street was in a "dark condition" and when he drove up he saw the car had smashed into the truck near the middle of Ashland avenue; "The first time I saw the truck was when I came up on it and when the other car ahead of me crashed into it."

Harold Webber, called by defendant, testified that he saw the accident which happened between 5 and 5:30 in the morning; that he was sitting in his truck in front of the Jewel Tea Company building; that he was delivering ice to the Jewel Tea Co.; that he saw the truck standing in the street and saw the automobile coming straight for the truck; that the automobile, when it struck the truck, moved the truck forward about 10 feet; that the morning "was dark but it was clear."

Joe Pasco, a chauffeur employed by defendant Lelantia Bros., testified that he was driving one of defendant company's Ford trucks with a load to the Jewel Tea Co.; that as he came down Ashland avenue he could see about one and a half blocks ahead; that he

took plaintiff in the truck to the hospital immediately after the accident.

Defendant Pagliugli testified that he had been a chauffeur for defendant company for about seven years; that the accident happened about 5:20 o'clock in the morning in front of the Jewel Tea company's store, which was from 100 to 120 feet south of 36th street; that he stopped his car just west of the southbound street car track because the door of the Jewel Tea company building was not open at the time; that he went over and notified them that he had a load of vegetables; that his tail light was not burning, that it had been damaged 5 or 6 weeks before; that he went back to his truck and was there about 10 minutes when the accident happened; that he noticed plaintiff's car coming south in Ashland avenue; that he was standing behind the truck and waved at plaintiff to turn to the right; that plaintiff turned to the southwest just before the collision; that "the lighting condition there that morning was very good. There were street lamps there. The morning was dark. It was before sunrise. It was clear. I could see about a block and a half or two blocks along Ashland avenue."

Plaintiff testified that when he came back from the hospital after having received first aid, he spoke to the driver of the truck and asked him when he was doing parking the truck in the middle of the street, and that the driver, Pagliugli, replied, "I tried to flag you down. I had to jump out of one way to keep from getting hit;" that he then asked the driver, "What were you doing out in the center of the street without a light?" The chauffeur replied, "I had a flash light." And I said, 'Where was it, in your pocket?' and he said 'No.'" Pagliugli denied that he had made any such statement. The weight of the load in the truck at the time was about 4 1/2 tons and the empty truck about 10,000 pounds.

Defendants concede that "upon the trial the negligence of the

Post-graduate is the time to be involved in the research.

Small, Frank

$$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}, \quad \frac{d}{dt} \left(\frac{\partial L}{\partial \dot{y}} \right) = \frac{\partial L}{\partial y}, \quad \frac{d}{dt} \left(\frac{\partial L}{\partial \dot{z}} \right) = \frac{\partial L}{\partial z}$$

— *Journal of the American Medical Association*, 1967, 201: 1031-1032.

1992-1993

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

Twelve months after the date of the report, the report shall be filed with the court.

any other person, and the person to whom the property is transferred shall be deemed to be the owner of the property for the purposes of this Act.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 08-28-2001 BY 60322 UCBAW

and a lot of vegetation; some like tall grass and some burning.

12. The above information is true and correct to the best of my knowledge and belief.

100-443887-100

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

...and the ... of

There are several reasons why the results of this study may be generalizable to other populations. First, the sample was drawn from a large, diverse population of young adults. Second, the study was conducted in a community setting, which may increase the external validity of the findings. Third, the study used a validated measure of self-esteem, which increases the reliability of the results. Finally, the study included a control group, which helps to rule out alternative explanations for the findings.

1994-1995

1. The first part of the report is a general introduction to the subject of the study.

1. Subject - The first name should be in bold & blue color

2017-2018

Source: <http://www.fishbase.org>

DOI: 10.1002/jbm.b.10682

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 394–401

... 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 2583. 2584. 2585. 2586. 2587. 2588. 2589. 2590. 2591. 2592. 2593. 2594. 2595. 2596. 2597. 2598. 2599. 2600. 2601. 2602. 2603. 2604. 2605. 2606. 2607. 2608. 2609. 2610. 2611. 2612. 2613. 2614. 2615. 2616. 2617. 2618. 2619. 2620. 2621. 2622. 2623. 2624. 2625. 2626. 2627. 2628. 2629. 2630. 2631. 2632. 2633. 2634. 2635. 2636. 2637. 2638. 2639. 2640. 2641. 2642. 2643. 2644. 2645. 2646. 2647. 2648. 2649. 2650. 2651. 2652. 2653. 2654. 2655. 2656. 2657. 2658. 2659. 2660. 2661. 2662. 2663. 2664. 2665. 2666. 2667. 2668. 2669. 2670. 2671. 2672. 2673. 2674. 2675. 2676. 2677. 2678. 2679. 2680. 2681. 2682. 2683. 2684. 2685. 2686. 2687. 2688. 2689. 2690. 2691.

14. The following are the names of the persons who have been appointed to the various committees of the Board of Directors:

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 395–402

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

THE UNIVERSITY OF CHICAGO LIBRARY

[illegible]

• *Journal of Management Education*, 2004, 28(10), 1207-1219. doi:10.3181/0000148528101207

not be more, Japan and India will keep their economies stable.

defendants was established," because the truck was standing in the street without a tail light, but they contend that such negligence was not the proximate cause of the accident; that the uncontradicted evidence shows that plaintiff was guilty of contributory negligence in not watching ahead of him, as he drove south in Ashland avenue, and that he did not have proper head lights on his automobile, as required by the statute.

On the other hand, counsel for plaintiff says that the sole cause of the accident was defendants' failure to have the tail light on the truck lighted.

Par. 17, chap. 95a, Cahill's 1933 Statutes provides: "When upon any public highway in this State, during the period from one hour after sunset to sunrise, every motor bicycle shall carry one lighted lamp and every motor vehicle two lighted lamps showing white lights, or lights of a yellow or amber tint, visible at least two hundred (200) feet in the direction towards which each motor bicycle or motor vehicle is proceeding." Obviously plaintiff was not complying with the provisions of this statute because he testified, "My bright lights were not burning at the time. My dim lights were. I could see about twenty feet straight ahead with those lights."

In Johnson v. Gustafson, 253 Ill. App. 316, we had occasion to consider this statute and said (p. 323): "In the instant case we are of the opinion that the statute requiring white lights visible at least 200 feet in the direction in which the automobile is proceeding is for the benefit not only of those who are using the highway ahead of the car, but, also, to enable those in driving the car to avoid accidents." The same rule is announced in Smith v. Highland Park Yellow Cab Co., 251 Ill. App. 99, opinion by Mr. Presiding Justice Jones of the Second District, now a member of the Supreme court. The court there said: (p. 142) "The statute of this State provides that every motor vehicle shall carry two lighted

...the
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..
... ..

...and the ...

On the other hand, according to the author, the results of the study are not conclusive, because the sample was not representative of the population.

[illegible]

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The process of urbanization is the movement of people from rural areas to urban areas. This movement is caused by a number of factors, including the search for better living conditions, the desire for education, and the need for employment. The result of this process is that the majority of the population now lives in cities and towns. This has a number of implications for the future of the United States. One of the most important is that it will lead to a concentration of resources in urban areas. This will mean that the government will have to spend more money on urban infrastructure, such as roads, bridges, and public transportation. It will also mean that the government will have to spend more money on urban social services, such as housing, health care, and education. This will lead to a higher cost of living in urban areas, which will in turn lead to a higher cost of doing business in urban areas. This will lead to a concentration of business in urban areas, which will lead to a concentration of wealth in urban areas. This will lead to a higher level of inequality in the United States. This is a serious problem that must be addressed if the United States is to remain a free and democratic society.

[illegible]

lamps visible at least 200 feet in the direction towards which the motor vehicle is proceeding, during the period from one hour after sunset to sunrise. The provisions of the statute are for the benefit not only of those who are using the highway ahead of the car, but also to enable those in driving the car to avoid accidents. (Johnson v. Shalabehn, 233 Ill. App. 216.) Nonperformance of such statutory duty resulting in injury to another may therefore be said to be negligence as a conclusion of law. (Barra State & I. S. Co. v. Veslager, 120 Ill. 240; Johnson v. Shalabehn, supra.)"

But counsel for plaintiff says that this provision of the statute "only applied to open state highways" and does not apply to streets in cities; and in support of this counsel cites Sec. 2037 of the Revised Chicago Code of 1931. That section provides that "It shall be unlawful for any person, firm or corporation operating any automobile, *** upon the public streets and highways within the city, to use acetylene, electric or other bright headlights, or any headlight the rays from which shall be intensified by any parabolic or condensing reflector, unless such headlight shall be properly shaded so as not to blind, dazzle or confuse other users of the highway or make it difficult or unsafe for them to ride, drive or walk thereon." So far as the evidence discloses this ordinance does not conflict with the statute.

We think the contention cannot be sustained because we are of opinion that the statute which we have above quoted applies to streets of cities as well as to highways in the country. The statute is not limited to highways outside municipalities. That this is also the view of the City Council of Chicago is shown by Sec. 2042 of the Revised Code, above cited, which provides that "It shall be unlawful to operate a vehicle the lights of which do not conform to the provisions of the Illinois motor vehicle law."

We think it clear that plaintiff was violating Sec. 16 of

[illegible]

the Motor Vehicle Act, above quoted; that he was negligent in this, and that such negligence contributed to the collision and his resultant injuries. Obviously, lights which enabled plaintiff to see but 20 feet ahead of him were of little or no use. We do not wish to be understood as intimating that plaintiff was not also negligent in failing to look where he was going because we do not pass on that question. We think it sufficient to say that the judgment cannot stand because of defendants' violation of the statute. Since we hold that both plaintiff and defendants were guilty of negligence which contributed to plaintiff's injuries, there can be no recovery under the law, and therefore the judgment is reversed with a finding of fact.

JUDGMENT REVERSED WITH A FINDING OF FACT.

McSurely, P. J., and Hatchett, J., concur.

the Motor Vehicle Act, above quoted; that he was engaged in such
 and that such engagement consisted of the following: that he was
 and injured. Secondly, that he was engaged in such
 by foot and of the order of 1000 to 1500. He was not in
 he was engaged in such activity and was not engaged in
 falling to him were he was going to the office of the
 question. To which it is replied that he was not engaged in
 of the business of the business, and that he was not engaged in
 with him with respect to the business of the business, and that he was not engaged in
 which consisted of the business of the business, and that he was not engaged in
 under the law, and that he was not engaged in the business of the business.

40. That.

THIRTY-SECOND: That he was not engaged in the business of the business.

THIRTY-THIRD: That he was not engaged in the business of the business.

38406

JESSE A. ROTHSCHILD, SAMUEL I.
KARGER, SIDNEY F. KARGER, VICTOR
KUNZER, Jr., FULLER S. ROTHSCHILD
and JOHN S. KARGER, copartners
doing business as ROTHSCHILD
& COMPANY,

Petitioners,

vs.

ALBERT SABATH,

Respondent.

1034
PETITION FOR LEAVE TO
APPEAL FROM MUNICIPAL
COURT OF CHICAGO.

282 I.A. 642²

MR. JUSTICE O'CONNOR DELIVERED THE OPINION OF THE COURT.

Plaintiffs brought suit against defendant to recover a balance claimed to be due them for wheat which they, as brokers, purchased for defendant at his request. There was a jury trial and a verdict in plaintiffs' favor for \$1355.26, being the amount of their claim. Afterward defendant's motion for a new trial was allowed and this court allowed plaintiffs' petition for leave to appeal.

The record discloses that plaintiffs are members of the Chicago Board of Trade and they contend that from time to time they purchased wheat for defendant at his request, there being more than 20 transactions; that all of the purchases were for future delivery of wheat and that on each occasion the wheat was sold by plaintiffs for defendant at his request before the time for the several deliveries.

The evidence shows that the accounts were settled from time to time by the differences between the purchase price and the sale price, plus brokers' commissions. Only four transactions are involved here. Plaintiffs claim that they bought July wheat at defendant's request as follows: May 29, 1932, 20,000 bushels at 59 1/8 cents; June 1, 1932, 5,000 bushels at 55 1/2 cents; June 1, 1932, 5,000 bushels at 55 3/8 cents, and June 3, 1932, 10,000 bushels at 54 cents, and that they sold this wheat, upon defendant's order, as

follows: June 3, 1932, 20,000 bushels at 54 7/8 cents; June 7, 1932, 20,000 bushels at 51 3/8 cents, and after charging brokers' commissions and the proper tax and crediting \$300 which defendant had paid by check on June 1, 1932, there was a balance due plaintiffs for which they sue.

There is no dispute about the figures, but the defendant contends that plaintiffs did not, in fact, buy wheat for him but only "options" and that it was understood between plaintiffs and himself that there would be no delivery of wheat but that the differences between the purchase and selling prices would be settled, that therefore the dealings between the parties were gambling transactions and void within the meaning of Sec. 130, Chap. 33, p. 1190, Ill. State Bar State. 1935.

Sec. 130 provides: "Whoever contracts to have or give to himself or another the option to sell or buy, at a future time, any grain, *** where it is at the time of making such contract intended by both parties thereto that the option, whenever exercised, or contract resulting therefrom, shall be settled, not by the receipt or delivery of such property, but by the payment only of differences in price thereof, *** shall be fined not less than \$10 or more than \$1,000, or confined in the county jail not exceeding one year, or both; and all contracts made in violation of this section shall be considered gambling contracts and shall be void."

The question for decision then is: Whether the claimed purchases and sales of the wheat in question were made with the intention on the part of both plaintiffs and defendant that no delivery of the wheat should be made or accepted and that settlements should be made only on market delivery. Riordan v. McCabe, 341 Ill. 506.

Counsel for both sides say that this question was properly submitted to the jury, and we must assume this to be the fact

1970, 1971, 1972, 1973, 1974, 1975, 1976, 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 26

There is no dispute among the literati, and the following
statements are generally accepted, in fact, they are the only
only "options" and that is not a disputed statement. It is not
himself that there would be no delivery of goods and that the
relations between the government and military forces would be
such as to make the relations between the military forces
such as to make the relations between the military forces
such as to make the relations between the military forces

[illegible]

although there are no instructions in the abstract, while in the common law part of the record the clerk shows a number of instructions, but ^{whether} they were given or refused, and at whose suggestion, does not appear. The jury found in favor of plaintiffs but the court set aside the verdict and awarded a new trial.

Defendant, called by plaintiffs under the statute, testified that during the month of May, 1932, he had two accounts with plaintiffs, one in connection with grain and the other in connection with stocks; that during this period a representative of plaintiffs called defendant 8 or 10 times a day and that "I remember requesting Mr. Freshman to purchase through Rothschild & Company wheat for me at various times," but he doubted if the purchases were actually made; that at times he received statements from plaintiffs which purported to show purchases and sales; that he paid plaintiffs \$500 in May or June, 1932, "to apply on my account for margin," and that he paid no other money on the account; that on each transaction he received a report from plaintiffs of the purchase or sale. Defendant further testified that he was a practicing attorney in Chicago and "carried on extensive transactions in the purchase of grain for years prior to 1932;" that he never made a demand on plaintiffs to deliver any wheat; that they never refused to deliver wheat to him; that in addition to being a practicing lawyer he was an officer of the Hawthorne Race track, vice-president and general manager of the track; that he owned 8 or 10 race horses and raced them in Illinois and Kentucky; that "I thought I was financially able to pay my losses when I went into the transaction at issue."

The substance of the evidence is further to the effect that in these transactions defendant would call up plaintiffs and talk to their representative and request that plaintiffs buy or sell, as the case might be, a certain number of bushels of wheat; that upon

each order to purchase wheat, plaintiffs would immediately telephone Daniel F. Rice, who was also a member of the Chicago Board of Trade, and state that plaintiffs wanted to buy a certain specified number of bushels of wheat, and that thereafter Daniel F. Rice reported that they had executed the order and sent a written confirmation of the transaction, and on each occasion of a purchase or sale by plaintiffs they would send to defendant a written memorandum covering the transaction, a number of which are in the record. One of these exhibits from plaintiffs to defendant is dated May 28th, in which it is stated that plaintiffs had bought 20,000 bushels of July wheat at 59 1/8 cents. At the bottom is a stamped form, on one line of which appears "Meac" and two lines lower "Agns" and opposite each of these abbreviations is a check mark which would indicate that the purchase was on "margin" as defendant contends. Plaintiffs never had any wheat in storage. This fact, of course, would not bar plaintiffs from selling wheat, but is an element to be considered in determining the intention of both parties.

Plaintiffs' head bookkeeper, whose duty it was to record and supervise all plaintiffs' business transactions, testified: "We did not have any grain in storage for Mr. Sabath. *** We were loaned the future by Daniel F. Rice & Company who held the wheat for us. We held no wheat on that particular option and I don't recall that we held any on any other option."

The evidence also shows that defendant had no use for the wheat, no place to store it, and he testified that one of plaintiffs' representatives told him at the time in question that it was a good chance now to "scalp a few points" on wheat options.

But counsel for plaintiffs contend that the rule announced in Morton v. McCabe, 341 Ill. 306, to which case we have heretofore referred, ought to control here; that while in that case the Supreme court held that two mortgages, given by McCabe on his farm to secure

...order to preserve them, ...
...of which ...
...and ...
...of ...
...that ...
...the ...
...plasticity ...
...for the ...
...these ...
...which ...
...help ...
...and ...
...various ...
...indicate ...
...plasticity ...
...would ...
...conditioned ...
...plasticity ...
...and ...
...the ...
...indeed ...
...the ...
...will ...
...the ...
...which ...
...little ...
...a ...
...and ...
...in ...
...therefore ...
...words ...

losses he had incurred in transactions similar to the transactions before us, were void because they were contrary to the provisions of Sec. 130 of the Criminal Code, above quoted, yet the court in that case held that other prior transactions between the parties, which occurred when, it appeared from the evidence, McCabe had sufficient funds to carry out such transactions, were not in contravention of Sec. 130. We cannot agree with the construction of that case as contended for by counsel for plaintiff. We think that all that can be said is that the court held that the question of the financial ability of McCabe to carry out his transactions was but an element to be taken into consideration in determining the intention of both parties.

We think the great weight of the evidence is that both parties intended that no wheat should be delivered, but instead there should be a payment of the difference between the purchase and sale price of the wheat. We are certain that we would not be warranted in disturbing the action of the trial court in awarding a new trial. We saw and heard the witnesses and was in a much better position to determine the matter in controversy than we are. We have only the printed page before us. The trial Judge is vested with a broad discretion in granting a new trial which we ought not to disturb except in a clear case.

For the reasons stated the order of the Municipal court of Chicago appealed from is affirmed.

ORDER AFFIRMED.

McSurely, P. J., and Matchett, J., concur.

[illegible][illegible]

... ..

757
AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the first day of October, in the year of our Lord one thousand nine hundred and thirty-five, within and for the Second District of the State of Illinois:

Present -- The Hon. BLAINE HUFFMAN, Presiding Justice.

Hon. FRANKLIN R. DOVE, Justice.

Hon. FRED G. WOLFE, Justice.

JUSTUS L. JOHNSON, Clerk.

RALPH H. DESPER, Sheriff.

282 I.A. 642

BE IT REMEMBERED, that afterwards, to-wit: on DEC 5 - 1935 the opinion of the Court was filed in the Clerk's Office of said Court, in the words and figures following, to-wit:

IN THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT
OCTOBER TERM, A.D. 1935

MARY MCKEOWN,

Appellee,

vs.

APPEAL FROM CIRCUIT COURT
WILL COUNTY.

JAMES D. CASTELLI,

Appellant.

HUFFMAN - P.J.

This is an appeal from an order of the circuit court of Will county in granting a new trial. Appellee as plaintiff below brought suit against appellant for damages sustained to her automobile in a collision between it and a car driven by appellant, which collision was alleged to have been caused by the negligence of appellant, who was the defendant below. The jury returned a verdict finding the defendant not guilty. Upon motion by plaintiff, the court granted a new trial. The defendant prosecutes this appeal from the order of the court granting the new trial.

It appeared from the evidence that the plaintiff was possessed of a Packard Sedan, and the defendant of a Chevrolet Coach. The accident occurred at the intersection of Richard street with Fourth Avenue in the city of Joliet, on February 28, 1931. Plaintiff's car was travelling north upon Richard street. Defendant was operating his car west upon Fourth Avenue. Plaintiff's car was damaged by the collision to such

an extent that it was sold to a wrecking company for \$40. The highest bid plaintiff was able to obtain from any other such company was \$25.

In granting the motion for a new trial, the court stated his reasons therefor, among which were the following: The location of the respective cars in the intersection at the time of the collision; their location immediately thereafter; the weight and size of the respective cars together with the number of passengers therein; the result of the collision upon the cars; and the testimony as it appeared with reference to the physical facts existing in the case. The court stated that he was of the opinion the verdict was against the manifest weight of the evidence.

Appellee's residence is just across the street from the Central Presbyterian Church; a dance was being held on that night at this church; appellee was at the church as one of the chaperons; her son Paul was using her car for the purpose of taking the young people to and from the party; and he was so engaged in returning certain of the guests to their homes at the time of this accident. As he approached the intersection in question, the evidence is to the effect that he reduced the speed of the car to five miles per hour. The defendant claimed that he was operating his car at a speed of from five to eight miles per hour at the time and place in question.

Trial courts are properly clothed with great discretion in the refusing or granting of motions for a new trial. They see and hear the witnesses testify and thereby have the advantage in many respects over a court of review. From an examination of this record, we are unable to say that the trial court abused its discretion in granting the motion for a new trial in this case.

The order of the trial court in granting a new trial is therefore affirmed.

Order affirmed.

The order of the trial court is affirmed.

Reversed and remanded.

Reversed and remanded.

STATE OF ILLINOIS, }
SECOND DISTRICT } ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for said Second District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in the above entitled cause of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this _____ day of _____ in the year of our Lord one thousand nine hundred and thirty-_____

Clerk of the Appellate Court

76 A
AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the first day of October, in the year of our Lord one thousand nine hundred and thirty-five, within and for the Second District of the State of Illinois:

Present -- The Hon. BLAINE HUFFMAN, Presiding Justice.

Hon. FRANKLIN R. DOVE, Justice.

Hon. FRED G. WOLFE, Justice.

JUSTUS L. JOHNSON, Clerk.

RALPH H. DESPER, Sheriff.

282 I.A. 642"

BE IT REMEMBERED, that afterwards, to-wit: on DEC 5 - 1935 the opinion of the Court was filed in the Clerk's Office of said Court, in the words and figures following, to-wit:

IN THE APPELLATE COURT OF ILLINOIS,

SECOND DISTRICT

OCTOBER TERM, A.D. 1935.

CATHERINE S. MORNINGSTAR,

Appellee

Appeal from Circuit Court,
Warren County.

vs.

EVERETT C. HARDIN, et al.,

Appellants.

HUFFMAN - P.J.

This was a chancery action brought by appellee against Everett C. Hardin, the Second National Bank of Monmouth, and Murray E. Buck. The bill alleged that a fiduciary relationship existed between appellee and appellant Hardin; alleged that by virtue of such relationship, the said Hardin induced the appellee to transfer to Murray E. Buck a \$7000 promissory note, designated as the Torrance note, to be put up as collateral by Buck with the said Second National Bank of Monmouth, as additional security for indebtedness then owing by Buck to said bank. It was charged that Hardin obtained an unfair advantage to himself as a large stockholder, officer and director of the said bank. Appellee was 92 years of age, and without business experience. Appellant Hardin was a large stockholder of the bank, the President thereof, and a man of wide business experience. It was alleged by appellee that in 1919, she became possessed of \$12,000; that she requested Hardin to look after the same and the investment thereof;

IN THE MATTER OF THE ESTATE OF

JOHN J. ROSS

DECEASED

JOHN J. ROSS, Plaintiff

vs.

JOHN J. ROSS

JOHN J. ROSS, Defendant

JOHN J. ROSS

JOHN J. ROSS

JOHN J. ROSS, Plaintiff, vs. JOHN J. ROSS, Defendant. This is a bill of complaint filed by the Plaintiff against the Defendant. The Plaintiff alleges that the Defendant has wrongfully taken possession of certain property belonging to the Plaintiff. The Plaintiff seeks recovery of the property and damages. The Defendant denies the allegations and claims that the property is his own. The court is asked to determine the rights of the parties and to grant appropriate relief. The Plaintiff's bill of complaint is supported by the following facts: The Plaintiff is the owner of certain real estate located at [address]. The Defendant has been in possession of the property since [date]. The Plaintiff has demanded the return of the property, but the Defendant has refused. The Plaintiff seeks a writ of replevin and damages. The Defendant claims that the property was given to him by the Plaintiff's mother, [name]. The Plaintiff denies this claim and asserts that the property was never given to the Defendant. The court is asked to grant the Plaintiff's request for relief. The Plaintiff's bill of complaint is supported by the following facts: The Plaintiff is the owner of certain real estate located at [address]. The Defendant has been in possession of the property since [date]. The Plaintiff has demanded the return of the property, but the Defendant has refused. The Plaintiff seeks a writ of replevin and damages. The Defendant claims that the property was given to him by the Plaintiff's mother, [name]. The Plaintiff denies this claim and asserts that the property was never given to the Defendant. The court is asked to grant the Plaintiff's request for relief.

that he agreed to do so and did from that time until 1933, act for appellee in the investment of her funds, looking after the collection thereof and in all respects handling her business affairs; that he took mortgages in his own name as mortgagee, which represented the investment of her funds; that he placed these in a box at his bank which he kept for and on behalf of appellee; that he was the recipient of appellee's entire confidence and trust; that among the several transactions was a \$10,000 mortgage, which in 1925 was renewed in the name of Hardin as mortgagee. This is the mortgage which was executed by the said Torrance. In 1930, Torrance paid \$3000 upon the principal of the loan and the mortgage was again renewed for the remaining balance of \$7,000.00, in Hardin's name as mortgagee. He looked after this renewal and placed the same in the safety deposit box in his bank which he used for appellee's business affairs. It is claimed that he reinvested the \$3000; that he collected interest on the loan and deposited the same in the bank to appellee's credit. The bill further charges that the \$7000 Torrance note was the property of appellee and in her box at the bank, having been placed there by Hardin; that he knew of the existence of the same and had in his possession at all times a key to her safety deposit box.

Appellee's daughter was the wife of Murray E. Buck. Buck was a customer of said bank and became heavily indebted to it upon mortgage secured notes signed by himself and wife. The bill charges that in April, 1933, Hardin prepared an instrument in writing, which he requested Buck to have appellee sign, which writing was an authority from the appellee to the bank to deliver to Buck the \$7000 Torrance note; that in pursuance thereof, Buck did request appellee to sign the instrument. This, appellee refused to do. It is then charged that a few days later, Hardin requested Buck to bring appellee

to the bank, together with his wife. This was done, and it is charged that Hardin thereupon worked upon the sympathies of appellee and told her that unless she executed the paper that the Bucks would lose their farm and that the bank would foreclose thereon; and further represented to appellee that if she would turn over the Torrance note to Buck, that it would be placed in his safety deposit box and would be just as safe as in her box, and would be returned to her deposit box in a few days when she requested it; that the reason for this was so that Hardin could convince certain persons that Buck had other property than his farm. It is claimed that Hardin represented to appellee that the note would be returned to her box in a short time, and would be returned whenever asked for by her. Appellee claimed that relying upon the statements and representations of Hardin, and without knowing the nature of the instrument which she was signing, she did sign a writing presented to her by Hardin, which is as follows:

April 1, 1933.

Second National Bank
Monmouth, Illinois.

You will please open my safety deposit box and deliver to Murray E. Buck the Geo. M. Torrance mortgage note of \$7000.00. Mr. Buck will issue his receipt therefor. I am loaning this to Mr. Buck.

Very truly yours,

Catherine Morningstar."

Following the execution of this writing by appellee, Hardin took from her safety deposit box the Torrance note, and delivered same to Buck. Hardin then wrote a receipt therefor which he had Buck sign, which is as follows:

[illegible]

"April 5, 1935.

I have this day received from Mrs. Catherine Morningstar mortgage note of G. M. Torrance for \$7000.00. This is borrowed from her for collateral purposes as per her order.

Murray E. Buck."

Appellee claims she did not know any use was to be made of the Torrance note except that it was to be placed in Buck's box, as represented to her by Hardin. She charges that she was ignorant of business dealings and inexperienced therein; that she relied implicitly upon Hardin and upon his representations to her that the Torrance note would be returned to her box in a short time and at any time upon her request; charging that at the time of the transaction, Hardin stood in a fiduciary relationship to her and that she did as he requested and directed her to do because of the fact of the confidence reposed in him, and the reliance she placed upon him to properly transact her business affairs and to protect her business interests. It is charged that she did not know the note was to be used as collateral to the indebtedness of Buck until later, when she requested the return of the note; that Hardin through his knowledge as the confidential advisor and agent of appellee, had full knowledge of her ownership of this note and took advantage of the relationship existing between them in order to secure the same as additional security for Buck's indebtedness to the bank. Appellee later requested of Hardin the return of her note. It is claimed that he then advised her for the first time that the note was held by the bank as collateral for Buck's indebtedness. The bill prays a decree establishing a trust in favor of appellee against Hardin or the bank or whichever one was the holder of the note, and that they be compelled to execute the trust by delivering the note to appellee, or in the event they no longer hold the same, that they be required to pay to her the

[illegible]

the value thereof. The court found that the Torrance note for \$7000. and the mortgage securing the same, were held by the Second National Bank of Wornouth, as trustee for appellee, and that said trust be executed by the surrendering of said note and mortgage to appellee. Hardin and the bank prosecute this appeal from the decree of the court.

It appears from the evidence that appellee had no bank account until she came into possession of this money after the death of her son, in 1919. It further appears that at the time she came into possession of the money, she requested Hardin to take charge of the same and to look after it for her. Her reasons for this are obvious. She was extremely old and lacking in business experience. He was a highly successful banker and business man of wide experience. The evidence discloses that he said to her, at the time of the above request: "I will take care of it the same as I would for my own mother." From that time down through the succeeding years, appellee produced approximately one hundred exhibits to sustain her contention of a fiduciary relationship existing between her and appellant Hardin. A great number of these exhibits are letters written by him to appellee with reference to the investment, collection and reinvestment of her funds, the disposition made of the money from time to time, the cashing of certain government securities, which letters were but the report to her of his acts in the handling of her money. Notes taken for loans thereof were generally taken in the name of Hardin, and especially so during the latter years.

It is contended by Hardin that nothing more than a business relationship existed between him and appellee, similar to the service customarily rendered at that time by all banks and bankers to their customers. Buck was indebted to the bank on a \$16,000 loan, which was a first mortgage on his farm. These notes had been sold by the bank. He was also indebted to the bank in the further sum of

\$14,585.68, which indebtedness was represented by notes and secured by a second mortgage on his farm and by a chattel mortgage. The bank moratorium became effective in March, 1933. It was in the following month that the transaction regarding the Torrance note took place. The record in this case consists of over 540 pages, of which approximately 400 pages are evidence. The extent of the record makes it impractical to attempt any discussion of the series of transactions between the parties. The remarks of the trial court are incorporated in the record. The court found from the evidence that a fiduciary relationship existed between appellee and appellant Hardin. He further found that appellee did not understand what was being done at the time she signed the writing on April 1, 1933, with respect to the Torrance note. It appears from appellee's testimony that she went to the bank on the day in question at the request of Hardin, which request was conveyed to her by Buck. She was about ninety years old and inexperienced in business. The evidence demonstrates that she had the utmost confidence in the appellant; that she had refused to sign the paper when presented to her by Buck upon a day previous; that at Hardin's instance Buck brought her to the bank, where at the instruction and direction of Hardin, she signed the paper as requested by him and as prepared by him. This occurred after a relationship of many years between appellee and appellant, during which time appellant was in possession and management of appellee's money. It is not disputed that during all of the foregoing time he had the complete confidence of appellee.

It has many times been said that if the confidence in fact exists and is reposed by one party and accepted by the other, the relationship is fiduciary and equity will so regard the dealings between them. *Warren v. Pfeil*, 346 Ill. 344, 360; *Higgins v. Chicago Title and Trust Co.*, 312 Ill. 11, 18. While the term fiduciary relation-

ship is a broad and comprehensive one, and scarcely susceptible of a fixed definition, applicable to all cases, (Comm. Merchant's Bank v. Kloth, 360 Ill. 294, 302; Mors v. Peterson, 261 Ill. 532, 536), yet the law regarding such relationship is so well settled as to require no discussion here. The questions presented in this case are whether the evidence is sufficient to establish such a relationship and if advantage has been taken thereof. These are necessarily questions of fact to be determined from the evidence in this particular case.

The bank held the Torrance note for \$7000 (Ex.51). This note was made payable to appellant Hardin, and endorsed by him "without recourse," at the time of the above transaction.

From an examination of the record in this case, we are of the opinion that the decree of the trial court is correct.

Appellee filed an additional abstract which in this case is deemed to have been reasonably necessary. The clerk is ordered to tax the costs thereof against appellants.

The decree of the trial court is affirmed.

Decree affirmed.

STATE OF ILLINOIS,

SECOND DISTRICT

} ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for said Second District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this _____ day of _____ in the year of our Lord one thousand nine hundred and thirty-_____

Clerk of the Appellate Court

77 A
AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the first day of October, in the year of our Lord one thousand nine hundred and thirty-five, within and for the Second District of the State of Illinois:

Present -- The Hon. BLAINE HUFFMAN, Presiding Justice.

Hon. FRANKLIN R. DOVE, Justice.

Hon. FRED G. WOLFE, Justice.

JUSTUS L. JOHNSON, Clerk.

RALPH H. DESPER, Sheriff.

282 I.A. 642

BE IT REMEMBERED, that afterwards, to-wit: On 10-1-35
the opinion of the Court was filed in the Clerk's Office of said
Court, in the words and figures following, to-wit:

OCTOBER TERM, A.D. 1935.

Appellee.

-1-

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA

DOCTRINE OF THE CASE

DOCTRINE OF THE CASE

The following is a summary of the facts of the case as stated in the complaint.

DOCTRINE OF THE CASE

DOCTRINE OF THE CASE

DOCTRINE OF THE CASE

DOCTRINE OF THE CASE

DOCTRINE OF THE CASE

This was an action brought by an alien under the provisions

of the Alien and Enemy Control Act of 1940, Chapter 34, Title 22, U.S.C.

to recover a refund of the tax paid by the defendant.

The plaintiff claims that the defendant is an alien enemy.

No one appears to the contrary of the plaintiff's claim.

The plaintiff claims that the defendant is an alien enemy.

as a citizen, resident, and native born of the United States.

The plaintiff claims that the defendant is an alien enemy.

as a citizen, resident, and native born of the United States.

The plaintiff claims that the defendant is an alien enemy.

as a citizen, resident, and native born of the United States.

The plaintiff claims that the defendant is an alien enemy.

as a citizen, resident, and native born of the United States.

The plaintiff claims that the defendant is an alien enemy.

as a citizen, resident, and native born of the United States.

impact and immediately went out to investigate. They furnished the only testimony as to the facts connected with the accident, as they appeared immediately after it happened. Appellee's car proceeded east on Rural Street a distance of approximately two hundred feet before coming to a stop. The streets were covered with snow, except in the center track where the snow had been worn off and portions of the pavement were exposed. The deceased was taken to his home by some of the neighbors who had heard the impact and who had gone out to investigate the cause of the noise. They lifted the deceased from the street and carried him up the steps into his residence. The appellee was present. A doctor was called. The injured man was removed to a hospital, where he forthwith died from his injuries.

The post mortem disclosed that the diaphragm had been ruptured and the stomach had passed from the abdominal cavity into the chest cavity; the lung on the left side was collapsed; the heart was displaced; internal hemorrhage had filled the stomach cavity; both legs were broken. These physical facts demonstrate that the deceased was struck by extreme force and violence. One witness on behalf of appellant testified that on the night of the accident, he met appellee at the hospital where in a conversation regarding the accident he asked him how it happened, and appellee responded, "Well, I was coming up the street, going east there, and then I saw him, but it was so quick that I gave him the horn and he didn't jump quick enough." The witness further testified that appellee stated he stopped his car as quickly as possible. Appellee was permitted to testify in regard to the above conversation in the hospital. Appellee admitted making the statement as above set out, but he denied making any statements such as, "I was going too fast," or, "I guess I was going too fast." It had been claimed by another witness for appellant that

[illegible]

on the evening in question, the appellee had stated to him that the accident happened because he was going too fast.

At the instance of appellant, the court instructed the jury with respect to an Ordinance of the City of Rockford, as follows:

"That the Ordinance of the City of Rockford, having to do with street traffic regulation, among other things, provides as follows:

'A pedestrian, in stepping from the sidewalk to any street, shall look in each direction for approaching vehicles and exercise reasonable care and caution in crossing such street and make all reasonable efforts to cross at regular street crossings.'

and if you believe from the evidence that plaintiff's intestate stepped from the sidewalk into Rural Street and that he failed to exercise reasonable care and caution in crossing such street, and that such failure, if any, contributed proximately to cause his injury, which resulted in his death, then you should find defendant not guilty."

The above instruction was given over the objection on the part of the appellant, and appellant insists that the same constituted reversible error, under the facts and circumstances as they exist in this case. There was no evidence in the case as to when or where the deceased stepped from the sidewalk into the street. Nor is there any evidence to disclose where appellee's automobile was at the time the deceased entered the street. As far as the record is concerned, there is no evidence that the deceased had stepped from the sidewalk into the street at the time he was struck by the automobile.

Instructions, although they may correctly state a rule of law, must be applicable to the evidence. They should not assume or be based upon facts not appearing in the evidence, as they may be prejudicial to a litigant's rights. *Rasmussen v. Nelson*, 217 Ill. App. 209; *Kirsch v. Walter*, 151 Ill. App. 378. Instructions of the above nature are likely to mislead a jury. *Vaughn v. Director of Rys*,

the hearing in London, the evidence was stated as follows: the
evidence was stated as follows: the evidence was stated as follows.

At the hearing in London, the evidence was stated as follows: the
evidence was stated as follows: the evidence was stated as follows.

"That the evidence of the City of London
evidence was stated as follows: the evidence was stated as follows.
evidence was stated as follows: the evidence was stated as follows.

"A preliminary, is stated from the evidence
to any other, shall be in each of the following
evidence was stated as follows: the evidence was stated as follows.
evidence was stated as follows: the evidence was stated as follows.

and if you believe that the evidence was stated
little interest was shown from the evidence was stated
evidence was stated as follows: the evidence was stated as follows.
evidence was stated as follows: the evidence was stated as follows.

the above instruction was given to the jury in the following
evidence was stated as follows: the evidence was stated as follows.
evidence was stated as follows: the evidence was stated as follows.

There was no evidence in the case as to the evidence was stated

evidence was stated as follows: the evidence was stated as follows.

to the evidence was stated as follows: the evidence was stated as follows.

evidence was stated as follows: the evidence was stated as follows.

evidence was stated as follows: the evidence was stated as follows.

There was no evidence in the case as to the evidence was stated

Instruction, evidence was stated as follows: the evidence was stated as follows.

There was no evidence in the case as to the evidence was stated

There was no evidence in the case as to the evidence was stated

There was no evidence in the case as to the evidence was stated

There was no evidence in the case as to the evidence was stated

There was no evidence in the case as to the evidence was stated

218 Ill. App. 595; Dunn v. Chrichfield, 214 Ill. 291. The above instruction was not based on any evidence in the case and it singled out a controlling element of defense to the jury. As we understand the evidence in this case, the deceased was in Rural Street, near the north curb thereof, when he was struck by the automobile; that the automobile was travelling east, and that it was the left front fender of the car which struck the deceased. The above things are gained from the physical facts disclosed by the evidence. Juries must not base verdicts upon conjecture and speculation. They should be based upon facts and circumstances appearing in evidence and upon reasonable inference and deductions drawn therefrom. What meager facts do exist in this case do not support the theory that the deceased had stepped from the south side of Rural Street into the path of appellee's automobile.

While this court is very reluctant to reverse and remand this case, yet under the facts and circumstances surrounding this particular accident, we are of the opinion that the above instruction places an undue emphasis upon that one material point, upon which there was no evidence, and that the jury could easily have assumed that since the duty to look, etc., rested upon the deceased, and since such fact did not appear in the proof, that the rule of law as announced by said instruction should apply and the jury very naturally might have considered it was thereby its duty to return a verdict of not guilty. There is no escaping the fact that the instruction did single out only one material question, which had a tendency to assume a fact not shown by the evidence, and which fact was one of controlling importance as a matter of defense. Since there was no evidence upon which to base the instruction and due to the fact that there were no eye witnesses to the accident, we believe that the ends of justice

will be better served by a retrial of this case.

The judgment is therfore reversed and the cause remanded for another trial.

Reversed and remanded.

...a letter served in a trial of this case.
The judgment is therefore reversed and the case remanded
to the lower court.

...for the purpose

STATE OF ILLINOIS,

SECOND DISTRICT

} ss.

I. JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for said Second District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in the above entitled cause. of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this _____ day of _____ in the year of our Lord one thousand nine hundred and thirty-_____

Clerk of the Appellate Court

787
AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the first day of October, in the year of our Lord one thousand nine hundred and thirty-five, within and for the Second District of the State of Illinois:

Present -- The Hon. BLAINE HUFFMAN, Presiding Justice.

Hon. FRANKLIN R. DOVE, Justice.

Hon. FRED G. WOLFE, Justice.

JUSTUS L. JOHNSON, Clerk.

RALPH H. DESPER, Sheriff.

282 I.A. 643'

BE IT REMEMBERED, that afterwards, to-wit: on DEC 5 - 1935 the opinion of the Court was filed in the Clerk's Office of said Court, in the words and figures following, to-wit:

IN THE APPELLATE COURT OF ILLINOIS,
SECOND DISTRICT
OCTOBER TERM, A.D. 1935.

SARAH EDNA PAGE,

Appellee,

vs.

APPEAL FROM THE CIRCUIT COURT OF
KANE COUNTY.

AGNES M. BURNS and RICHARD
O. BURNS,

Appellants.

HUFFMAN - P.J.

Appellee was the owner of a residence property in Aurora, Illinois. She exchanged or traded this property to Willis C. Keeves and wife for other property. While Keeves and his wife had the record title to the property, they entered into a contract of sale therefor with appellants. Pursuant to such contract of sale between Keeves and appellants, Keeves furnished a guaranty title policy for the property, issued by the Chicago Title and Trust Company, showing merchantable title to be in Keeves and wife. Following the above transactions, appellee Page brought a suit to set aside the deal between herself and Keeves whereby Keeves became vested with the legal title to the property in question. The circuit court of Kane county entered its decree in that case, finding that the exchange had been induced by fraud, and ordered that Keeves and wife should reconvey to appellee herein title to the property in question subject to the rights of appellants herein.

IN THE MATTER OF THE ESTATE OF

JOHN W. HILL, DECEASED

vs.

JOHN W. HILL, JR.

et al.

Plaintiffs

vs.

JOHN W. HILL, JR.

Defendants

JOHN W. HILL, JR.,

Plaintiff

vs.

JOHN W. HILL, JR.,

Defendant

JOHN W. HILL, JR.,

Plaintiff

vs.

JOHN W. HILL, JR.,

Defendant

JOHN W. HILL, JR.,

Plaintiff

under their contract of purchase as made with the said Keeves. Although Keeves prayed and prosecuted an appeal from this decree, yet he subsequently thereto complied with the decree of the circuit court and reconveyed the property to appellee Page together with transfer of the contract of sale as made between him and appellants. Appellants defaulted in some of the monthly payments under the contract of sale during or following the above litigation between Keeves and Mrs. Page. After Keeves had complied with the decree of the court entered in the suit brought by Mrs. Page against him, Mrs. Page then instituted this suit against appellants to foreclose the contract of sale as made between Keeves and appellants. The trial court found the amount due from appellants to appellee including a reasonable attorney fee, and decreed that appellants should pay to appellee such sum with interest within a fixed time, and that upon such payment being made, that appellee should deliver to appellants a title guaranty policy from the Chicago Title and Trust Company showing merchantable title in herself, together with proper conveyance of the premises; and that in default thereof, on the part of appellants to so pay, that the premises be sold by the Master and the debt to appellee satisfied. Appellants prosecute this appeal from the decree as above entered.

Appellants urge that due to the fact that Keeves had prosecuted an appeal from the decree entered against him in the suit brought by Mrs. Page, that they were not in default in their contract, and that no payments should become due. Keeves and wife having complied with the decree of the court in that case, renders this a moot question at this time. Appellants also urge that no payments should be due from them to Mrs. Page until she had furnished them a guaranty policy, as above set out. Keeves

had already furnished such a policy while the legal title was in him, and the decree of the court in this case amply protects the rights of appellants in that it provides the appellee shall furnish to appellants such a policy upon appellants completing the contract. We find no errors existing in this record and the decree of the trial court is affirmed.

Decree affirmed.

already, furnished with a letter to the local police
and the owner of the house in this case, and the
figure of the house in which is located the residence of
the person who appears to be the owner of the house.
In the case of the person who appears to be the owner of the house,
the person who appears to be the owner of the house is the
owner of the house.

10/11/1911

STATE OF ILLINOIS,

SECOND DISTRICT

} ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for said Second District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in the above entitled cause. of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this _____ day of _____ in the year of our Lord one thousand nine hundred and thirty-_____

Clerk of the Appellate Court

79 A
AT A TERM OF THE APPELLATE COURT,

Begun and held at Ottawa, on Tuesday, the first day of October, in
the year of our Lord one thousand nine hundred and thirty-five,
within and for the Second District of the State of Illinois:

Present -- The Hon. BLAINE HUFFMAN, Presiding Justice.

Hon. FRANKLIN R. DOVE, Justice.

Hon. FRED G. WOLFE, Justice.

JUSTUS L. JOHNSON, Clerk.

RALPH H. DESPER, Sheriff.

282 I.A. 643²

BE IT REMEMBERED, that afterwards, to-wit: On DEC 5 - 1935

the opinion of the Court was filed in the Clerk's Office of said
Court, in the words and figures following, to-wit:

IN THE APPELLATE COURT OF ILLINOIS,

SECOND DISTRICT

OCTOBER TERM, A.D. 1935.

ROBERT B. AYRES, Administrator
of the Estate of Frank Ayres,
deceased,

Appellee,

vs.

APPEAL FROM COUNTY COURT
DUPAGE COUNTY.

VILLAGE OF HINSDALE, a Municipal
Corporation,

Appellant.

HUTTMAN - P.J.

This suit was originally commenced by appellee in a Justice of the Peace court to recover the sum of \$494, alleged to be due as a reasonable sum for services performed by appellee's intestate, in spreading a special assessment for appellant village, known as assessment number 276. The trial there resulted in a judgment in favor of the plaintiff. From such judgment the village perfected an appeal to the county court of DuPage county, where this trial was had before the Judge of said court, without jury. The trial court gave judgment in favor of appellee for \$370.50 and costs. Appellant prosecutes this appeal from such judgment.

As above stated, this suit was brought for services rendered by plaintiff's intestate in spreading a special assessment for the village upon an alleged agreement or contract between

said deceased and the village. The contract was not in writing. The deceased was an old resident of the village of Hinsdale, and had served in various public capacities therein. From 1922 to 1931, the deceased had spread all of the special assessments levied by the village. They approximated 125 in number. Of that number, proceedings for twelve of such assessments were abandoned by the village, as follows: One in each of the years 1922, 1923, and 1924; three in 1925; two in 1926; and one in each of the years 1928, 1929, 1930, and 1931. The deceased had always been paid his compensation by voucher payable from the first installment of the several assessments. The special assessment involved herein was instituted by ordinance approved November 5, 1929, and abandoned by ordinance approved January 6, 1931. Appellee's intestate continued to live in the village until his death in August, 1932. At no time did he make any claim to appellant for compensation for services rendered in spreading assessments in any of the proceedings which were abandoned by the village. In December, 1934, appellee instituted this suit to recover for the reasonable value of the services of her intestate, rendered in connection with said special assessment number 276.

It is maintained by appellant that plaintiff's intestate had agreed that no compensation would be payable to him for any services he might render in spreading special assessments, the proceedings for which might thereafter be abandoned by the village. Appellant offered to prove by the members of the Board of Trustees of said village the above agreement made with them on the part of the said deceased. The court refused such testimony and appellant assigns same as error. We are of the opinion under the facts as they exist in this record, that such testimony was admissible, as proof of

conversations between parties to a parole contract. Wigmore on Evidence, (2nd ed.) sec. 1770, p. 778; that they were further admissible as statements against interest. Hagenbaugh v. Crabtree, 33 Ill. 226; Pederson v. Nixon, 284 Ill. 421, 428, 429. Such proof offered, was to the effect that the deceased met with the village board, whereat the terms of his employment and compensation were discussed by the village board and agreed upon, to which the deceased acquiesced, made no objection, and later carried out such agreement. The admissions were proper as against appellee. Republic Iron Co. v. Indus. Com. 302 Ill. 401, 405; Schell v. Weaver, 225 Ill. 159, 161, 162; Wigmore on Evidence, (2nd ed.) sec. 1081, p. 598; sec. 1455, et seq., being chapter on statements against interest.

For the above error, this cause is reversed and remanded.

Reversed and remanded.

STATE OF ILLINOIS, }
SECOND DISTRICT } ss.

I, JUSTUS L. JOHNSON, Clerk of the Appellate Court, in and for said Second District of the State of Illinois, and the keeper of the Records and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Appellate Court in the above entitled cause, of record in my office.

In Testimony Whereof, I hereunto set my hand and affix the seal of said Appellate Court, at Ottawa, this _____ day of _____ in the year of our Lord one thousand nine hundred and thirty-_____

Clerk of the Appellate Court

George Carrico Drake, by Edith M. Drake, His Conservator, Plaintiff-Appellee, v. The Bankers Reserve Life Company, a Corporation and The Ohio National Life Insurance Company, a Corporation, Defendants-Appellants.

Appeal from Circuit Court, Montgomery County.

APRIL TERM, A. D. 1935.

Gen. No. 8910

Agenda No. 19

MR. JUSTICE DAVIS delivered the opinion of the court. This is an appeal from a judgment of the circuit court of Montgomery county in favor of the plaintiff, Edith M. Drake, conservator of George C. Drake, against the defendants, The Bankers Reserve Life Company and The Ohio National Life Insurance Company, for the sum of \$3858.00. The suit was originally commenced against The Bankers Reserve Life Company and subsequent to the bringing of the suit The Ohio National Life Insurance Company, which became liable and bound for all of the obligations of The Bankers Reserve Life Company under the policy, voluntarily became a party defendant in said cause. The ad damnum in the declaration is \$2500.00 and although judgment was entered for \$3858.00 which included amounts due after the filing of the suit, such error, if any, is waived by the defendants.

The parties entered into a stipulation by the terms of which they waived a jury trial and consented that the cause might be submitted to one of the judges of the circuit court of Montgomery county "upon this stipulation of facts and exhibits attached."

It appears from the stipulation that George C. Drake on February 13, 1920, applied to The Bankers Reserve Life Company for life insurance, and that said company accepted his application and he paid the sum of \$92.00 as premium on said policy; and, in consideration of said payment, on February 23, 1920, issued to him insurance policy, numbered 54351.

On August 11, 1925, said George C. Drake applied for total permanent disability insurance with waiver of premium payments, and on that date furnished

282 I.A. 643

On said date George C. Drake was adjudged insane by the County court of Macoupin county and committed to the Illinois State Hospital for Insane at Jacksonville, where he remained as an inmate until December 18, 1927, when he escaped from the hospital and returned to where his wife was residing, near the village of Raymond in Montgomery county. On December 29, 1927, he was paroled by the authorities of the said hospital to his wife, and on March 29, 1928, the record, kept by the authorities of said hospital, had entered upon it, "Discharged as cured;" that at the time said entry was made no medical examiner or official of said hospital had examined said George C. Drake since the time he was paroled to his wife on December 29, 1927; that he was returned by the authorities of Montgomery county to the hospital on October 25, 1928, where he has at all time since remained; that he is still living, but has not been restored to his reason by order of the County court of Macoupin county, or by the order of any court of the State of Illinois, or any other state.

That on March 19, 1927, when the policy of insurance and waiver of premium provision, attached thereto, were in full force and effect said George C. Drake entered into a policy loan agreement with The Bankers Reserve Life Company and borrowed, upon the security of said policy, \$350.00, which sum was not repaid to The Bankers Reserve Life Company, or any part thereof, and that the interest accruing on said loan after February 28, 1928, was not paid by said George C. Drake, or by any one for him.

Alfred A. Isaacs, County Judge of Macoupin county and Judge presiding when George C. Drake was adjudged insane, acting for Edith M. Drake, conservator of said George C. Drake, wrote a letter to The Bankers Reserve Life Company, of Omaha, Nebraska, as follows:

Gillespie, Illinois, October 14, 1927.

"Gentlemen: George Drake of this city is insured by you and has a loan on his policy and you now hold the policy as security for the loan. Yesterday he was adjudged insane and committed to the State Insane Asylum at Jacksonville, Illinois. His widow desires to make proof of his disability and apply for payment according to the policy for total disability. Will you please forward the necessary blank forms to make this proof."

This letter was duly received by The Bankers Reserve Life Company and on October 20, 1927, said company replied to the same, saying:

We thank you for your recent letter reporting that George C. Drake insured in this company under policy 54351 has recently been adjudged insane and committed to the Illinois State Institution.

At your request we are pleased to inclose necessary forms upon which proof of total and permanent disability must be made. You will note that one of these blanks is to be made out by the claimant who ordinarily is the insured. In this case, however, a guardian will have to be legally appointed by the court for the insured and the guardian should make out the claim and accompany it with certified copies of the court procedure in the case in which George C. Drake was declared insane, as well as certified copies of letters of guardianship and bond showing the appointment and qualifications of the guardian of George C. Drake.

The blanks are submitted without prejudice to this company and will have our prompt consideration when they are received at the Home Office.

No proofs of loss were ever made and delivered to The Bankers Reserve Life Company or to the agent, or agents, for it.

It was further stipulated, that if judgment was rendered in behalf of the plaintiff in said cause that the same might be rendered by the court against The Bankers Reserve Life Company and The Ohio National Life Insurance Company and that the defendants might appeal, either jointly or severally, from any judgment rendered.

The defendants state that the main error relied upon for reversal is that the court erred in finding that the defendant, The Bankers Reserve Life Company, received at its home office due proof of permanent disability according to the provisions of the disability rider, before lapse of the policy for non-payment of premium, and that the plaintiff was entitled to receive payment of the disability benefits provided thereunder.

It is also the contention of appellant that the question as to whether Drake, by reason of his mental disability, was absolved from making proof is not before the court under the pleadings and state of the record. That this is apparent from the pleadings. A demurrer having been sustained to the original declaration, which alleged that by reason of the disability of Drake he was incapable of, and absolved from giving any notice of disability, the declaration was amended and after the filing of a general and special demurrer to the amended declaration it was abandoned and an additional count upon which judgment was entered was filed alleging that on October 20, 1927, due notice of

loss and proof of loss and disability were furnished to the defendant in writing.

It is insisted by appellee that Drake being insane and the policy making no provision for giving notice as to making proof of disability in case of the insanity of the insured, that none was required. It is further insisted that the case was submitted to the judge of said court for decision without a jury upon "the stipulation of facts and the exhibits attached," and that the stipulation constitutes both the pleadings and the proof and supersedes the pleadings. In the view we take of the case it will be unnecessary to determine whether Drake, by reason of having been adjudged insane was absolved from giving notice of disability.

It is not disputed that the policy was in full force and effect on October 13, 1927, when George C. Drake was adjudged insane and that all premiums had been paid and none were due until February 28, 1928.

It is insisted by appellant that the correctness of the judgment depends upon whether the requirements of the disability rider as to due proof were complied with by the assured while the policy was in full force and effect. That the requisites are four in number:

First, that the proof must be made while the policy is in full force and effect and no premium in default; second, the company must receive due proof at its Home Office; third, that the insured, before attaining the age of 60 years, had become totally and permanently disabled by bodily disease or injury originating after the delivery of the policy; fourth, that he will be permanently, continuously and wholly prevented thereby from performing or engaging in any business for compensation.

As to the first requirement it is admitted that the company upon receipt of proof at its Home Office of the date of the beginning of the disability would know whether the premiums were in default. As to the contention as to whether the disability began before the insured reached the age of 60 years, it would appear that the company would know from its records that the insured had not reached the age of 60 years.

It is insisted that the two vital requirements are, that the company must have due proof not only that the insured was totally and permanently disabled, but it must also be shown that the disease or injury originated after the delivery of the policy.

If due proof was furnished the company that the insured was insane, and was confined in an asylum for the insane, that would be proof that he was totally

and permanently disabled within the meaning of the provisions of the policy and the company would also have notice that the disability originated after August 31, 1925, when the rider was issued to Drake, from the certificate of J. N. English, medical examiner for the company, who certified that the insured was then in good health.

Under the provisions of the policy only due proof is required. It does not require that it be given by the insured or that it be in writing or that it be made on blanks furnished by the company, and can be made any time while the policy is in full force and effect.

The letter, written by Judge Isaacs on October 14, 1927, the day after George C. Drake was adjudged insane, and received by the company at its Home Office, informed the company that said Drake was adjudged insane and committed to the State Insane Asylum at Jacksonville, Illinois. In our opinion this letter was due proof of total and permanent disability under the terms of the policy.

Notice was given while the policy was in full force and effect and while no payment of premium was in default. It was received at the Home Office of the company and was made before the insured was 60 years of age, which was known to the company and could be verified by the application of the insured in the possession of the company. The disability originated after the delivery of the rider to the insured, as evidenced by the fact that its own physician examined the insured just previous to the issuing of the rider and pronounced him then in good health, and was due proof under the terms of the policy that the insured was totally and permanently disabled and wholly prevented from performing or engaging in any business for compensation, gain or profit.

The term "permanent disability" does not mean perpetual, as used in the rider, but is used in the sense as being opposed to temporary, and this is shown by the provisions of the policy that provide that payment of premium will be waived during the continuance of such disability, and that payment of the annuity will not extend beyond the time of the continuance of the disability.

In addition to this the company reserved the right under the terms of the policy, before approval of the proof of disability, to have any medical examiner, or other accredited representative of the company, make such examination of the insured relative to his disability as the company might desire.

Instead of acting upon the notice of Judge Isaacs as to the insanity, and consequently the total and permanent disability of George C. Drake, or making an examination of the insured relative to his disability, the company took the position that the due proof required must be made upon forms furnished by it, as shown by the letter of W. G. Preston, its vice-president, in reply to the letter of Judge Isaacs.

As evidenced by the exhibits attached to the stipulation of facts, the position of the company now is that due proof of total disability not having been given the company, and no premiums having been paid, that the policy lapsed and was cancelled. Under date of March 15, 1930, in a letter to Edith Drake, wife of George C. Drake, she was informed that the interest not having been paid on the loan and the premium not having been paid and the policy having no value, it lapsed by reason of the provisions of the policy and note and was cancelled. Under date of March 9, 1928, and during the thirty days' grace in which the insured was permitted to pay the premium that became due February 28, 1928, a letter was received by Judge Isaacs in which an inquiry was made as to whether George C. Drake had been discharged or whether he was still under mental disability. In other exhibits, consisting of letters to Edith M. Drake, the company referred to the disability of the insured, thus showing that it was fully aware of his mental disability.

In the case of *Anderson v. The Inter-State Business Men's Accident Assn. of Des Moines*, 354 Ill. 538, our Supreme Court in referring to what would be sufficient proof of death said:

"It may be stated as a general rule that sufficient proof of death is made by evidence in any form which is substantial and trustworthy enough to enable the insurer to form an intelligent estimate of his rights and liabilities under the contract and any succinct and intelligent statement giving information called for by the policy, whether verified or not, or whether by eye witnesses or not, in the absence of some policy or statutory requirement to the contrary, is sufficient to put the insurer upon inquiry to determine whether he is liable. The rule is well settled that contracts of insurance are to be construed liberally in favor of the insured and strictly against the insurance company. *Budelman v. The Amer. Ins. Co.*, 297 Ill. 222. Neither the policy nor the statute requires claimant to use a prescribed form in making proof of loss, nor is it required that the proof of loss shall be verified."

In the case of *Kelley v. United Benefit Life Ins. Co.*, 275 Ill. App. 113, the court in its opinion said:

"The provision for the waiver of premiums in the life policy sued on is that the insured shall furnish proof, satisfactory to the insurer at its Home Office, that he has become totally and permanently disabled by accident or disease. No condition is set out as to the manner in which the proof is to be furnished. It does not provide that the proof is to be in writing. The proof is such evidence of the truth of the matters asserted as tends to establish them. Contracts of insurance are to be construed liberally in favor of the insured. When one has, in good faith, furnished proof sufficient to apprise the insurer of the character and extent of the claim, and no particular forms are required by the policy or by statute, such person should not be barred because of the nature or manner in which the proof was submitted, provided such proof was actually submitted and the insurer had due notice thereof."

In this case it was not required that the notice of disability be made on the forms furnished by the company, and in view of the mental disability of the insured the notice received by it in the letter of Judge Isaacs was sufficient to put the company upon inquiry to determine whether it was liable, and for that reason it can not defeat the claim on the ground that due proof was not made of such insanity and total and permanent disability. The judgment of the circuit court of Montgomery county is affirmed.

Affirmed.

(Ten pages in original opinion.)

In the Matter of the Estate of Orville J. Penwell,
Deceased, Warren Penwell, O. E. Penwell, Max H.
Penwell and Pauline P. Craig, Appellants, v.
The First National Bank of Danville,
Illinois, Executor of the Will of
Orville J. Penwell, De-
ceased, Appellee.

Appeal from the Circuit Court of Vermilion County.

APRIL TERM, A. D. 1935.

Gen. No. 8913

Agenda No. 22

MR. JUSTICE DAVIS delivered the opinion of the Court.

This is an appeal by appellants, Warren Penwell, O. E. Penwell, Max H. Penwell and Pauline P. Craig, legatees and devisees named in the Last Will and Testament of Orville J. Penwell, deceased, from a judgment entered by the circuit court of Vermilion County on a hearing of objections to an item of \$5,000.00, money paid out as attorney's fees by the executor of said estate, appellee herein, the First National Bank of Danville, Illinois, and for which it has taken credit in its final report filed in the Probate Court of said county, the circuit court having overruled the objections of appellants to said item of attorney's fees and held that \$5,000.00 was a reasonable fee.

The sole question for determination is as to whether the executor is entitled to a credit of \$5,000.00 for the necessary and reasonable attorney's fees incurred in relation to the settlement of said estate.

By the terms of his will, after providing for the payment of his debts, he gave, bequeathed and devised to Jeanette P. Miller his niece, all of his chattel property and certain real estate in Danville.

All of the personal property and all of the real estate that he had at the time of his death (except that given to said Jeanette P. Miller) was devised and bequeathed to The First National Bank of Danville, in trust, upon the following terms and conditions, and for the following uses and purposes: To hold the same for a period of five years, and to pay the income from said real estate and personal estate to certain

named persons and distribute the same to the persons named in said will at the end of said period, the trustee to take charge of both the real and personal estate to be held in trust by it, and control, manage, direct, rent, lease, dispose of, sell, mortgage, improve, invest and re-invest the same, and to do all things pertaining to the execution of said trust.

The estate was free of incumbrances of any kind, and was of the value of about \$250,000.00, the personal property being valued at about \$50,000.00. For inheritance tax purposes said estate was valued at \$202,000.00.

The Final Report of the executor shows receipts of \$49,599.62, and expenditures of \$29,094.72, which included an item of credit of \$5,000.00, attorney's fees paid, leaving a balance of \$20,504.89, said sum of \$5,000.00 having been charged by Lewman & Carter, the attorneys employed by it, for services rendered said executor in the administration of said estate.

From the testimony and exhibits it appears that Lewman & Carter, the attorneys representing the executor, performed all the necessary legal services ordinarily required in an estate similar to this, where no extensive litigation ensues. Very few claims having been filed and only one contested. The attorneys appearing on behalf of the executor in a partition suit instituted in Shelby county for the partition of certain real estate in which the testator owned an undivided interest and in which the executor was made a party defendant, and also devoting more time than is ordinarily required in the fixing of the state and federal inheritance taxes.

While the title to the real estate devised in trust to The First National Bank of Danville, Illinois, vested immediately in the bank as trustee, the bank as executor in the performance of its duties in the administration of said estate was required to make inheritance tax returns both to the county clerk and the collector of internal revenue of all the property of said estate, including the property held in trust by it, and to pay the taxes assessed, and was personally liable for its payment and if necessary could sell so much of the property devised as would enable it to pay the taxes. It also devolved upon the executor to see that the tax was properly assessed. *Lorenz v. Weller, et al*, 267 Ill. 230; Cahill's Ill. Rev. St., Chap. 120, par. 400.

When an executor deems it advisable or necessary to secure the services of an attorney to enable him to properly discharge the duties of his office or to

represent him in any litigation in which the estate may be involved, he unquestionably has the right to retain counsel for such purpose, but the claim of such counsel for fees for services so performed is enforceable against such executor in his individual capacity and not against the estate. The right to allow to an executor credit in his account for reasonable and necessary attorney's fees paid to said attorney for services in enabling such executor to properly and efficiently perform the duties of his office is undoubted. An executor will be given credit for all necessary and reasonable attorney's fees incurred in relation to estate matters. *Sprinkle v. Forrester*, 162 Ill. App. 45.

The proper mode of meeting the legitimate expenses of an administration is for the representative to make the necessary disbursements, for which he will be allowed credit in his account. In re-estate of Thurber, 311 Ill. 211-215.

Several members of the bar of Vermilion county testified as to the fair, usual, customary and reasonable attorney's fees in probate matters, such as the one in question, and, basing their answers upon the services performed and upon the fact that the estate was valued at \$250,000.00, fixed such reasonable fee at from \$4,000.00 to \$6,000.00.

The amount that the executor is entitled to take credit for in its account is only the amount of the necessary and reasonable attorney's fees paid for services rendered to it, as executor, and any fee paid for services performed for it, as trustee, cannot be taken credit for in its account as executor. *Mercy Hospital, et al, v. Wright, Executor*, 213 Ill. App. 634.

It is true that the court should consider the opinion of the attorneys expressed by them in their testimony as to what is the usual, customary and reasonable charge for like services, yet under the facts in this case we are in duty bound to exercise our independent judgment to some extent in the fixing of the necessary and reasonable amount that the executor may take credit for in its account.

After due consideration of the evidence and the necessary legal services performed for such executor, and the opinion of witnesses as to what is the usual, customary and reasonable charges for like services, the value of the estate administered, and the skill and ability necessarily required to properly perform such services and our own independent judgment as to what is a reasonable fee to be allowed, our judgment is that \$3,000.00 is a liberal amount to be allowed the executor

for the necessary and reasonable fee to be paid by it for the services of an attorney in the administration of said estate.

It is ordered that the judgment of the circuit court of Vermilion county be reversed and said cause remanded with directions to sustain the objections to said allowance of attorney's fees and that an order be entered in said cause fixing the amount, for which said executor may take credit for money expended for attorney's fees, at \$3,000.00.

Reversed and remanded with directions.

(Five pages in original opinion.)

S. B. Hofsas, Plaintiff Appellee, v. Ira Monroe, Defendant Appellant.

Appeal from Circuit Court of Piatt County.

APRIL TERM, A. D. 1935.

282 I.A. 644

Gen. No. 8894

Agenda No. 23

MR. JUSTICE ALLABEN delivered the opinion of the Court.

On April 27, 1931, Ira Monroe, defendant herein, executed a promissory note to S. B. Hofsas, plaintiff, in the sum of \$210.85, with interest at the rate of 7 per cent per annum due September 1, 1931. This note had the usual provisions permitting a judgment by confession in any court of record, and provided for the allowance of \$32.00 attorney's fees if judgment were confessed. On September 13, 1934, defendant paid plaintiff the sum of \$50.00, which plaintiff applied to the account of interest, in the sum of \$49.95, and 5 cents on the principal. On September 15, 1934, in the Circuit court of Piatt county, in vacation, on a complaint and cognovit the clerk entered judgment by confession in the sum of \$242.80, and costs. Execution was issued immediately and returned by the sheriff on the same day "no property found". On the same day, upon the affidavit of N. E. Hutson, attorney for plaintiff, reciting the hereinbefore mentioned judgment, the issuance of an execution to the sheriff, his return of "no property found", and the further averment that the defendant had no property within the knowledge of the affiant but believed that the State Bank of Hammond was indebted to the defendant, a garnishee summons was issued against the State Bank of Hammond, and was properly served. Thereafter plaintiff filed interrogatories to be answered by the garnishee defendant. The garnishee defendant answered that it had \$141.05 in its possession due to the defendant. On October 1st, the Circuit court of Piatt county entered judgment on the interrogatories against the garnishee defendant, State Bank of Hammond, as garnishee, for the sum of \$141.05, and no costs.

On October 2, 1934, the defendant, Ira Monroe, filed a motion to set aside the judgment of \$242.80 and for leave to plead. The motion set out that he was a resident of Douglas county, and not Piatt county, of

which the plaintiff and his attorney had knowledge, that a demand was made on him in Douglas county by the plaintiff, at which time he made a payment of \$50.00 upon the agreement that no further action would be taken by the plaintiff seeking to collect the note, until defendant had received certain funds from the sale of his crops; and that he was acting with due diligence upon his learning of the entry of said judgment. Incorporated in said petition was a notice to the State Bank of Hammond setting up practically the same matter contained in the motion itself, but containing the additional statement that the defendant had no property in the county of Piatt, that the same was known to the plaintiff and his attorney; and calling upon the garnishee defendant, the bank, to make his defense for him as set out in the notice in the garnishee proceedings. The hearing on this motion was continued until October 11, 1934. On October 10, 1934, defendant, Monroe, filed a motion to vacate and set aside said judgment of October 1st and to quash the writ of garnishment, alleging the judgment of \$242.80, on September 15, 1934, in the Circuit court of Piatt county, the issuance of the execution, and the return of the sheriff of Piatt county, "no property found" on September 15, 1934, the affidavit of Hutson, the issuance of the garnishee summons, and service all on the same day; that no adequate and proper search for property was made by the sheriff prior to the return of the original execution; that defendant, Monroe, was not a resident of Piatt county and had no property in said county, all of which was well known to the plaintiff and his attorney; that he had personal property sufficient in value above any lawful liens or exemptions to satisfy the amount of said execution, interest and costs; praying that the judgment against the garnishee be vacated. On October 11, 1934, the court overruled defendant Monroe's motion to set aside judgment of September 15, 1934, and for leave to plead; also the petition of Irvin Quick to intervene. On November 2, 1934, the court overruled the defendant Monroe's motion to vacate the original judgment of garnishment and to set aside the garnishment writ. From this ruling of the court the defendant, Monroe, prosecutes this appeal.

No errors relied upon for reversal are set out in appellant's brief. However, a purported assignment of errors appears on page 14 of the abstract of record. It is claimed that the court erred in entering the judgment of October 1, 1934, for \$141.05 against the State Bank of Hammond; second, that the court erred in overruling the motion of the defendant to vacate the

judgment and for leave to plead; third, the court erred in overruling the appellant's motion to vacate and set aside the judgment and to quash the writ of garnishment.

Inasmuch as the second assignment of error is not in accordance with the notice of appeal filed herein, and is not argued in defendant's brief, it must be disregarded. The other two assignments of error relate to the ruling of the court denying the motion of defendant Monroe to vacate the judgment against the garnishee defendant, the Hammond State bank and to quash the garnishment writ and will be considered together. The garnishment writ was issued pursuant to the statute providing for the issuance of the same. (Ill. State Bar Stats. 1935, Chap. 62, Sec. 1.) All of the proceedings were regular on their face. The motion sets up that the sheriff did not make a proper investigation before making his return, also that no execution was issued to the sheriff of Douglas county, where the defendant resided, and alleged in the petition that he had property sufficient to satisfy the judgment in Douglas county. The petition also sets forth that the defendant did not reside in Piatt county and had no property in Piatt County: That all of this was well known to the plaintiff and his attorney.

It seems to us that the defendant can not complain that the sheriff of Piatt county did not make a sufficient investigation before making his return "no property found" when, as a matter of fact, defendant did not have any property in said county. No investigation, however minute, could have found any property of the defendant in Piatt county, if as a matter of fact none was in existence. Defendant insists that an execution had to be issued to Douglas county where the defendant resided, of which the plaintiff had knowledge, and proper return from the sheriff of Douglas county "no property found" obtained from the sheriff of that county before garnishment summons could issue.

Some of the cases cited in support of that proposition have to do with creditors' bills brought under Ill. State Bar Stats. 1935, Chap. 22, Sec. 49, which are not in point where use is made of the garnishment statute. The case of *Chanute v. Martin*, 25 Ill. 49, is a garnishment proceeding. It has no application to the case at bar because the defendant tendered property to the sheriff sufficient to satisfy the execution. No case has been cited, and we know of none where it has been held that execution must issue to the sheriff of a county other than the one in which the judgment was obtained,

and a return had thereon before a garnishment summons could be issued.

It appears to us that defendant's motion to set aside the judgment against the garnishee and to quash the garnishment summons did not set up sufficient facts so that this court can say that there was any error in the trial court's denial of the motion. The decision of the trial court is, therefore, affirmed.

Order affirmed.

(Seven pages in original opinion)



PUBLISHED IN ABSTRACT

Barton County Rock Asphalt Company, a Corporation,
Plaintiff and Appellee, v. The City of Jackson
ville, Illinois, a Municipal Corporation,
Defendant and Appellant.

Appeal from Circuit Court, Morgan County.

APRIL TERM, A. D. 1935.

282 I.A. 644

Gen. No. 8896

Agenda No. 8

MR. JUSTICE ALLABEN delivered the opinion of the Court.

Barton County Rock Asphalt Company, a corporation, plaintiff appellee, brought suit against the City of Jacksonville, a municipal corporation, on May 10, 1934. Defendant was properly served and filed answer to the original complaint. Various motions were filed by both parties hereto, and on September 26, 1934, plaintiff filed an amended complaint which, omitting caption, was as follows:

"1. That on the 8th day of November, A. D. 1932, at Jacksonville, Illinois, the City of Jacksonville then being indebted to the plaintiff in the sum of Four Hundred Sixty-four and 40/100 Dollars (\$464.40), then made and forwarded to the plaintiff by mail a certain warrant of the City of Jacksonville in words and figures following, to-wit:

Series O. STATE OF ILLINOIS,
Morgan County, ss. No. 0-8963

City of Jacksonville, Ill., Nov. 8, '32 193
TREASURER OF THE CITY OF JACK-
SONVILLE.

Pay to
the order of Barton County Rock Asphalt
Company \$464.40

City of
Jacksonville \$464. & 40 Cts. Dollars
From STREET & PUB. IMP. FUND Fund.
Countersigned F. A. Robinson, John J. Reeve,
City Clerk. Mayor.

Endorsed on the face of warrant:

PROTESTED For Non-payment

Nov. 25, 1932.

J. Allison Palmer,

Notary Public.

"2. That afterwards, on the 25th day of November, A. D. 1932, at Jacksonville, Illinois, said warrant duly endorsed by the plaintiff, was duly presented to the Treasurer of the City of Jacksonville, defendant, for payment, but was not paid; that said warrant was thereupon duly protested for non-payment, of all of which due notice was given to the said City of Jacksonville.

"3. That there was necessarily incurred and expended as costs of said protest the sum of Three and 43/100 Dollars (\$3.43).

"4. That the Defendant is now indebted to the Plaintiff in the sum of Four Hundred Sixty-seven and 83/100 Dollars (\$467.83), together with interest thereon from November 8th, 1932 at five per cent; that the Plaintiff is the owner and holder of the said Warrant and that the same and the debt represented thereby of the City of Jacksonville to the Plaintiff is due and unpaid.

"WHEREFORE, Plaintiff demands judgment against the Defendant for the sum of Five Hundred Dollars (\$500.00)."

Defendant appellant's motion to strike the amended complaint being overruled, it filed the following answer and counter claim (omitting caption):

"City of Jacksonville, a municipal corporation, defendant, by Orville N. Foreman, its attorney, answers the complaint of Barton County Rock Asphalt Company, a corporation, plaintiff, as follows:

I.

"1. Defendant denies that there was necessarily incurred and expended as costs of protest on the alleged warrant the sum of three and 43/100 dollars (\$3.43), and charges that said costs of said protest, if any, were unnecessary and in no way constitute a claim against this Defendant.

"2. Defendant denies that it is now indebted to the plaintiff in the sum of four hundred sixty-seven and 83/100 dollars (\$467.83), together with interest thereon from November 8, 1932, at 5% for the reasons hereinafter set forth.

"3. Defendant denies that the warrant and the debt represented thereby of the City of Jacksonville, defendant, to the plaintiff, is due and unpaid for the reasons as hereinafter set forth.

II.

"For a first defense, defendant, City of Jacksonville, Illinois, a municipal corporation, says:

"1. That the alleged warrant in the complaint therein set forth arose out of the alleged purchase by the City of Jacksonville, on, to-wit: October 19, 1932, of certain rock asphalt with the trade name of 'BAR-CO-ROC', for use in its Street Department.

"2. That Section 65.93, Chapter 24, Smith-Hurd Statutes of the State of Illinois, 1933, provides that the City Council shall have power to provide by ordinance, that all the papers, printing, stationery, blanks, fuel and all the supplies needed for the use of the City, shall be furnished by contract, let to the lowest bidder.

"3. That pursuant to the authority in said statute conferred and by virtue thereof, the ordinances of the City of Jacksonville provide in Article 1, Chapter XXXV of the General Ordinances of the City of Jacksonville, passed the 19th day of June, 1908, approved and published on the 22nd day of June, 1908, in words and figures as follows, to-wit:

"Sec. 1. 'Whenever the City of Jacksonville shall require any lumber, brick, stone, sand, paper, printing, stationery, blanks, fuel or other supplies, the same shall be ordered by the city counsel of said city. And before the letting of any contract therefor by the city the probable cost of any such article or material shall be first ascertained for any period of time not exceeding one year, and when the expense thereof shall exceed the sum of one hundred dollars the contract shall be let to the lowest bidder in the manner hereinafter prescribed, and be approved by the mayor; provided, that any such contract may be entered into by the city clerk or other proper officer without advertising for bids, by a vote of two-thirds of the aldermen elected to the city council.

"Sec. 2. 'Whenever any such article or material shall be ordered by the city council, it shall be the duty of the city clerk to advertise in one or more newspapers of general circulation printed or published in said city, for proposals to furnish the articles or materials ordered by the city council, for the use of said city, for any period of time not exceeding one year. Such advertisement shall be published at least three times seven days before the day fixed for opening said proposals, and shall

state the conditions of the letting of such contract and the time and place the bids will be opened, and the right to reject any or all bids shall be reserved in the advertisement.' That said ordinance was in full force and effect on, to-wit: The 19th day of October, 1932, and had been for a long time prior thereto and is now in full force and effect.

"4. That the price of the alleged purchase of rock asphalt exceeded the sum of one hundred dollars (\$100.00); that no advertisement for bids for the contract for the same was made; that none of the requirements of said ordinance were carried out; that the alleged purchase was void.

"5. That the alleged warrant in this case was issued without any authority whatsoever, being issued for a void purchase and to pay a liability which did not then exist against the said City of Jacksonville, defendant herein.

III.

"For a second defense, defendant, City of Jacksonville, Illinois, a municipal corporation, says:

"1. That the alleged warrant in this case was issued in payment to the plaintiff for a car of rock asphalt under the trade name of "BAR-CO-ROC", purchased by the defendant from the plaintiff on the 19th day of October, 1932.

"2. That said warrant was issued on the 8th day of November, 1932, and said warrant was immediately forwarded to plaintiff at its usual place of business at Iantha, Missouri, by mail and was received by the plaintiff in the due course of mail.

"3. That all funds of the City of Jacksonville in the hands of its Treasurer were during the month of November, prior to the 21st day of November, 1932, on deposit in the Ayers National Bank of Jacksonville, Illinois; that according to business usage warrants issued by the City of Jacksonville on its Treasurer were payable at said The Ayers National Bank of Jacksonville, Illinois; that plaintiff knew this business usage and that said warrant was payable at said The Ayers National Bank of Jacksonville, Illinois.

"4. That said The Ayers National Bank of Jacksonville, Illinois, was closed by order of the Comptroller of Currency of the United States on, to-wit: November 21, 1932; that by virtue of the closing of said The Ayers National Bank of Jacksonville, Illinois, the funds of the defendant on that date on deposit in said The Ayers National Bank of Jacksonville, Illinois, were sequestered and in a large part lost to this defendant; that a

dividend of only 10% has been paid to this defendant on its claim against said The Ayers National Bank by reason of its funds on deposit therein prior to its closing as aforesaid.

"5. That defendant at all times subsequent to the issuance of said warrant and prior to the closing of the said The Ayers National Bank as aforesaid, had ample funds on deposit in said Bank with which said warrant could have been paid if presented for payment.

"6. The plaintiff did not present said warrant for payment either to the Treasurer of the City of Jacksonville, defendant aforesaid, or to said The Ayers National Bank of Jacksonville, until the 25th day of November, 1932; that by the use of due diligence plaintiff could have presented said warrant prior to the closing of said The Ayers National Bank of Jacksonville, Illinois, either to the Treasurer of defendant or to the said The Ayers National Bank of Jacksonville, Illinois; that plaintiff failed to use due diligence in presenting said warrant for payment; that by reason of the failure of the plaintiff so to present said warrant within a reasonable time after its issuance and receipt by the plaintiff of the same, the defendant was prejudiced thereby to the extent of the loss on the share of funds belonging to the defendant in said The Ayers National Bank of Jacksonville, Illinois, applicable to the payment of said warrant; that said loss amounts to Three Hundred Ninety-seven and 96/100 Dollars (\$397.96).

"7. That by reason thereof the sum of Three Hundred Ninety-Seven and 96/100 Dollars (\$397.96) is paid on said warrant and constitutes a satisfaction thereof pro tanto.

IV.

COUNTER CLAIM.

"And by way of counter claim to the plaintiff's pretended cause of action the defendant alleges as follows:

"Defendant re-alleges the allegations in paragraphs 1 to 5, inclusive, of Section III hereinbefore set forth.

"6. That plaintiff did not present said warrant for payment either to the Treasurer of the City of Jacksonville, defendant aforesaid, or to said The Ayers National Bank of Jacksonville, Illinois, until the 25th day of November, 1932; that by the use of due diligence plaintiff could have presented

said warrant prior to the closing of said The Ayers National Bank of Jacksonville, Illinois, either to the Treasurer of defendant or to the said The Ayers National Bank of Jacksonville, Illinois; that said plaintiff negligently delayed to present said warrant for payment prior to the closing of the said The Ayers National Bank of Jacksonville, Illinois, either to the Treasurer of the defendant or to said The Ayers National Bank of Jacksonville, Illinois; that by reason of the negligence of the plaintiff in so failing to present said warrant within a reasonable time after its issuance and receipt by the plaintiff of the same, the defendant was prejudiced thereby to the extent of the loss of the defendant on the share of funds belonging to the defendant in said The Ayers National Bank of Jacksonville, Illinois, applicable to the payment of said warrant; that said loss amounts to Three Hundred Ninety-Seven and 96/100 Dollars (\$397.96).

"7. That by reason of the negligence of the plaintiff in so failing to present said warrant within a reasonable time after its issuance and receipt by the plaintiff of the same, the defendant was injured in the sum of Three Hundred Ninety-Seven and 96/100 Dollars (\$397.96).

"Wherefore, the defendant demands judgment by reason of its said counter claim; for the sum of Three Hundred Ninety-Seven and 96/100 Dollars (\$397.96)."

(Affidavit omitted.)

To which the plaintiff filed the following replication and motion to strike: (Caption omitted.)

"In reply to Defendant's, The City of Jacksonville, Illinois, a Municipal Corporation, Answer, Plaintiff, Barton County Rock Asphalt Company, A Corporation, by its attorney, William N. Hairgrove, says:

"1. That there was necessarily incurred the protest fees in Paragraph 1 of Section 1 of the Answer filed herein, and of this the Plaintiff puts itself upon the country.

"2. That the matters and things set up in Paragraphs 2 and 3 to Sub-Section 1 are merely conclusions based on reasons set forth in Sub-Section 2, and Plaintiff moves to strike said Paragraphs 2 and 3 of Sub-Section 1, and all of Section 2, and for grounds for its said motion, the Plaintiff shows to the Court that the Ordinance set out in Section 2, and alleged as made pursuant to the

Statutes of the State of Illinois therein referred to, that the Statute gave no power to the City of Jacksonville, and Defendant had no power to pass such an Ordinance and had no power, under said Section, to pass any valid Ordinance with such provisions, except for City supplies for the use of the City, while, as appears from the said Second Section, the debt incurred in this cause is for material furnished for street purposes and not for city supplies.

"Wherefore, the City was without such powers concerning the subject of this suit, and such ordinance is void in so far as it covers any matter outside of supplies for the said City.

"3. And Plaintiff, by Its Attorney, further alleges:

"That Section 3 of said Answer is insufficient and states no legal defense to the Complaint.

"4. And Plaintiff further says that the Counter Claim, being based on the matters set out in the Third Section of said Answer, is without merit and must stand or fall with the Third plea.

"Wherefore, the Plaintiff now moves the Court to strike Paragraphs 2 and 3 of Section 1, and to strike all of Sections 2 and 3, and to strike the Counter Claim now remaining on the files of this Court, and that they be held for nothing esteemed for the reasons given, and for the further reason that it does not appear that the warrant was not regularly issued, and that the Mayor and Clerk of the Defendant in issuing said warrant were duly authorized and empowered so to do, and even if so, the City having received on the purchase the benefit and use of the material furnished, and the Plaintiff having parted with the value thereof for the benefit of the City, the City would thereby be estopped to set up as a defense its own irregularities in the exercise of the power to purchase.

"Wherefore, the Plaintiff prays that the said parts of said Answer and Counter Claim be stricken from the files herein."

Upon hearing on plaintiff appellee's motion to strike the answer and counter claim of the defendant appellant said motion was allowed; whereupon defendant appellant asked the Court to strike sub-section 1 of paragraph I of its answer, and elected to stand on the pleading. The court, after hearing all the evidence, found the issues in favor of the plaintiff, and

assessed the plaintiff's damages in the sum of \$515.65; the order concludes:

"It is therefore ordered, adjudged and decreed by the Court that the plaintiff do have and recover of and from the defendant, the City of Jacksonville, Illinois, a Municipal Corporation, the sum of \$515.65 and costs of suit, to which the defendant excepts."

It is from this judgment that the defendant has prosecuted this appeal. The errors urged for reversal are that the court erred in allowing plaintiff's motion to strike the answer and counter claim of the defendant as to all parts covered by plaintiff's motion; the court erred in entering judgment against the defendant; the court erred in entering judgment in the amount of \$515.65. We will dispose of the errors assigned in the reverse order for convenience. It is claimed that the court should not have entered judgment in the amount of \$515.65 because the ad damnum was \$500.00. This can be disposed of very quickly because in the case cited by defendant, *Mitchell v. Supreme Lodge of the Modern American Fraternal Order*, 155 Ill. App. 183, an opinion of this district, it is pointed out that objection must be made at the time judgment is entered or the same will be waived. The record does not disclose that any specific objection was made to the discrepancy between the ad damnum and the amount of the judgment at the time the judgment was entered, so that the court was not in error when it entered the above judgment. The second ground is that the court erred in entering judgment against the defendant. The court struck all the pleas, and the counter claims, whereupon the defendant elected to stand on the pleadings. If the court was correct in its ruling as to striking all the pleadings and the defendant elected to stand on the pleadings there was nothing for the trial court to do but enter judgment for the plaintiff. No error was committed by the trial court in so doing.

The first assignment of error goes to the propriety of the court's allowing plaintiff's motion to strike the answer and counter claim of defendant. Plaintiff submits two reasons why the answer setting up the ordinance does not apply to this case. The ordinance provides that whenever the city of Jacksonville requires, any lumber, brick, stone, sand, paper, printing, stationery, blanks, fuel, or other supplies, before the letting of any contract the probable cost shall be ascertained, and when the expense shall exceed the sum of \$100.00 the contract shall be let to the lowest bidder

after the city clerk has advertised in a newspaper for proposals, and that none of the requirements were complied with. It appears to us that what was contemplated by the ordinance in the purchase of supplies, was the purchase of those articles which are in general use by the city at all times, and which have to be replaced at frequent intervals, and that the rock asphalt under the trade name "BAR-CO-ROC" was a material, and not supplies, and that it did not come within the purview of the ordinance. (*Bartlett v. City of Lowell*, 201 Mass. 151.) It would, therefore, follow that the trial court properly struck that part of the answer which set up the ordinance as a defense. The remainder of the answer and counter claim which was stricken by the court, on plaintiff's motion it is claimed was erroneously done because in its motion the plaintiff did not set up any particular ground. A reading of that part of the motion, addressed to Sections 3, 4, and the counter claim, discloses that it was clearly the intent of the pleader to attack the sections for the reason that there was no legal duty on the plaintiff to use any diligence in the presenting of the warrant in question after it was received. It seems very clear that this was understood by all parties to this proceeding, and while slightly irregular in form we believe sufficient to raise the question.

The warrant was merely an order by the City of Jacksonville on the treasurer to pay \$464.40 to the Barton County Rock Asphalt Company. It was not a negotiable instrument. (*Stratton v. Kimsey County*, 137 S. W. 1170.) We know of no case which holds that where one sends out an order drawn on himself he can complain because the order was not presented in due course of business. As a matter of fact, the time consumed between the mailing of the warrant and its presentation was not great, but in any event, we do not feel that the plaintiff was subject to the diligence required had it received an instrument which was negotiable. It, therefore, appears to us that the trial court properly struck all of the answer and the counter claim, and properly entered judgment in this case. The judgment, therefore, is affirmed.

Judgment affirmed.

(Thirteen pages in original opinion.)

the first of these is the fact that the
 the second is the fact that the
 the third is the fact that the

the fourth is the fact that the
 the fifth is the fact that the
 the sixth is the fact that the
 the seventh is the fact that the

the eighth is the fact that the
 the ninth is the fact that the
 the tenth is the fact that the
 the eleventh is the fact that the

the twelfth is the fact that the
 the thirteenth is the fact that the
 the fourteenth is the fact that the
 the fifteenth is the fact that the

the sixteenth is the fact that the
 the seventeenth is the fact that the
 the eighteenth is the fact that the
 the nineteenth is the fact that the

the twentieth is the fact that the
 the twenty-first is the fact that the
 the twenty-second is the fact that the
 the twenty-third is the fact that the

Mary H. Scott, Administratrix of the Estate of S.
Walter Scott, Deceased, Appellee, v. Janet
Tick, Appellant.

Appeal from Circuit Court, DeWitt County

APRIL TERM, A. D. 1935.

282 I.A. 644

Gen. No. 8897

Agenda No. 24

MR. JUSTICE FULTON delivered the opinion of the Court.

This is an appeal from a judgment entered in the Circuit Court of DeWitt County in the sum of \$10,000.00 awarded to appellee and against appellant as damages under the Injuries Act for the death of appellee's intestate in an automobile accident on October 29, 1932.

The declaration consisted of five counts. The first and second counts charged general negligence; the third count violation of the Motor Vehicle Act by failing to stop at a traffic stop sign before entering an intersection; the fourth count failure to stop at a stop sign and failing to yield the right of way to an automobile approaching from the right; the fifth count excessive rate of speed, greater than was reasonable and proper, having regard to the traffic and use of the way.

The suit was instituted against the appellant and Jacob Tick, her father. The first count of the declaration charged joint negligence on the part of both defendants, and all the other counts charged that Jacob Tick was the owner of a Buick automobile which was under the care and management and driven by his servant, the appellant, Janet Tick. The appellant and the other defendant, Jacob Tick, both filed separate pleas of not guilty and Jacob Tick filed a special plea denying that the appellant Janet Tick was then and there his agent or servant and averring that she was not employed by him to drive the automobile mentioned in the declaration.

By agreement of parties, jury was waived and a trial had before the court. At close of the plaintiff's testimony Jacob Tick was dismissed as a party defendant. The court found in favor of the appellee and awarded her damages against appellant Janet Tick in the sum

of \$10,000.00, upon which finding judgment was entered for that amount and costs of suit.

The testimony shows that Illinois State Bond Issue Route 48 ran north and south and intersected with State Bond Issue Route 120, which ran east and west, one-half mile north of Weldon, DeWitt County, Illinois. On October 29th, 1932, the decedent S. Walter Scott and Mary H. Scott, his wife, the appellee, and their two-year-old son started from Decatur, Illinois, with Chicago as their destination. They were traveling in a Chevrolet coach, going by way of Weldon, Illinois, over Route No. 48. The decedent was driving the car. Route No. 48 had no stop signs at this particular intersection, but stop signs were placed on each side of Route 48 on Route 120, making Route 48 a through highway and requiring traffic to stop on Route 120 before crossing the intersection. Both decedent and the appellee had been over both highways before and were familiar with these facts. The Scott car, driven by the decedent, approached this intersection about nine o'clock in the morning going north; upon reaching the intersection of the two routes, it collided with a Buick car driven by the appellant.

The appellee testified that she was sitting on the right side of the front seat with the baby on her lap; that prior to reaching the intersection they had been driving between thirty and thirty-five miles an hour, but as they approached the intersection decedent slowed down and looked both ways, took his foot off the gas and put on the brakes. Appellee further testified that when they were approximately twenty-five or thirty feet from the intersection she glanced from the right to the left and saw no car; that there was a corn field at the southwest corner of the intersection which obstructed the view to the west on Route 120; that she again looked just as they entered the intersection and no car was in sight; that the Chevrolet was at that time going approximately twenty to twenty-five miles an hour straight ahead across the intersection; that when she first saw the Buick car it was between the stop sign and the center of the intersection, about ten feet from their car; that immediately thereafter the Buick car struck the Chevrolet on the left side about the middle of the car; that the decedent was thrown violently from the car and the Chevrolet traveled on northward about seventy or eighty feet across the ditch and into the highway fence on the east side of Route No. 48. It is conceded that when the decedent was picked up he was unconscious and died as a result of his injuries on November 1st, 1932.

C. L. Cruthers, a witness for appellee, testified that he was driving west on Route No. 120 towards this intersection and was going to turn on Route 48 towards Decatur. He stated that he saw the Chevrolet approaching the intersection from the south and the Buick from the west. In his judgment the Chevrolet was traveling about thirty-five miles an hour and slowed down as it neared the intersection. He could not tell whether the Buick stopped at the intersection or not, as it was directly on a line with him. He saw the impact and the Tick car turned to the north or northeast and the Scott car proceeded on north for a considerable distance. On cross-examination he stated that he was driving about forty to forty-five miles per hour and that the Scott car was coming at about the same rate of speed when he first saw it; that after the accident the Tick car was at the northeast corner of the intersection, with two wheels on the slab and two wheels off and facing west; that at the intersection the pavement is unusually wide, practically double the regular width.

C. A. Bell testified that he was traveling south on Route 48 near the intersection and he observed the Scott car coming from the south and the Tick car coming from the west when he was approximately one hundred and fifty yards distant. He had a clear and unobstructed view of both cars. In his judgment both cars were traveling at about the same rate of speed; that the Tick car did not stop at the stop sign before entering the intersection.

Mary Bell, wife of C. A. Bell, testified that she was riding in the car with her husband, and that when they were about eighty or one hundred feet from the intersection she saw the Tick car approaching the intersection at the rate of forty-five or fifty miles an hour; that it did not stop at the stop sign before entering the intersection.

The appellant testified that she lived in Clinton, Illinois, and was twenty-seven years old and the daughter of Jacob Tick; that on the day in question she was driving from Clinton to Champaign in company with her mother and Mrs. Green, both of whom were riding in the rear seat; that she was traveling about thirty miles per hour; that as she neared the intersection she noticed the stop sign and stopped her car; that just south of where she stopped there was a field of corn; that she looked to the south and to the north and then started across the intersection very slowly; that she was shifting and still in second gear when she noticed another car coming from the south; that it seemed to

be right upon her and she put her foot down upon the brake and held the wheel tight; that her car seemed to whirl around and spin to the north; that when her car stopped it had turned around and was facing Clinton in the northeast part of the intersection; that she did not see Mr. or Mrs. Bell at the scene of the accident; that she was familiar with the intersection and knew that there was a stop sign on the west side of Route 48 where it crossed Route 120 and that there was no stop sign on Route 48 at this intersection. She further stated that the corn field on her right prevented her seeing the other car at the stop sign.

Sophia Green, who was riding in the back seat of the car driven by appellant, testified that at the time of approaching the intersection she was talking with Mrs. Tick and did not notice the stop sign; that appellant did stop her car on the west side of this intersection before she started across; that she did not see any of the other cars until after the collision which happened in the middle of the intersection.

Mrs. Jacob Tick, mother of appellant, testified that she was also riding in the back seat of the Buick car with Mrs. Green; that she did not know just how the accident happened, but that her daughter stopped at the stop sign before entering the intersection.

Appellant argues that the judgment should be reversed, first, because of the contributory negligence of the decedent; second, the lack of ordinary care on the part of plaintiff intestate; third, variance between the declaration and the proof and fourth, that the award is excessive. Appellant stresses the fact that appellee's decedent was not exercising due care because he drove into the intersection at a high and excessive rate of speed. This statement is not supported by the preponderance of the oral testimony. The disinterested witnesses who were in the best position to view the Chevrolet car all state that decedent was driving along the highway at a reasonable rate of speed and that he slowed down as he approached the crossing. It is urged that the physical facts tend to prove that decedent entered the intersection at a reckless rate of speed because the decedent's car proceeded on north after the collision for a distance of about eighty feet, breaking a guy wire and the highway wire fence. However, when it is remembered that decedent was immediately thrown from the car at the time of the collision and no one left to control the movements of the car, it is not surprising. Appellant further says that the Buick car weighed 4,000 pounds and the Chevrolet 2,700 pounds, and decedent's car being struck in the middle

on the left side, that if appellant had been driving rapidly and decedent slowly the Buick car would have plowed right through the other car. This argument loses its effect when it is remembered that appellant turned her car to the north and that it appeared to spin around so that her car was struck on the right fender. Physical facts are proper evidence to be considered with the other evidence in a case: *Johnson v. Duke*, 247 App. 242. They are oftentimes of material aid where oral testimony is lacking, but in this case there were so many eye witnesses that there is no doubt as to how the collision occurred, or as to the approximate rate of speed at which decedent was traveling. We believe the Court was entirely warranted in finding that the decedent was not guilty of contributory negligence. Both parties were familiar with the intersection and both were experienced drivers, with knowledge of the stop signs and rules governing drivers of motor vehicles on the highway. At this particular crossing or intersection, the north and south highway had been planned as a through highway because of the erection of proper signs by State highway authorities. It is contended by the appellant that even though decedent was traveling on a through highway and had the right of way at the intersection, it did not follow that he might continue onward wholly regardless of any other automobile approaching the intersection, citing the recent case of *Thomas v. Buchanan*, 272 App. 308, and applying the doctrine laid down in that opinion to the facts in this case. While that case was reversed in the Supreme Court on another point, 357 Ill. 270, the facts are quite dissimilar. In that case the driver of the decedent's car saw the other car approaching the intersection in ample time to stop or avoid the accident, and did not do so. In this case the decedent had the right to assume that drivers of cars approaching the intersection from the west would not fail to halt at the stop sign, and would have their cars under control, so as to give preference of the right of way to him if it became necessary for the safety of others using the highway. *Thomas v. Buchanan*, 357 Ill. 270. There was no requirement that he stop before entering the intersection and we feel that he operated his car with due care and caution and in the same manner as any ordinarily prudent person would do under like or similar circumstances. The preponderance of the evidence shows that appellant did not observe the stop sign and drove on to the crossing without materially slackening her speed. If she had stopped her car as she testified and then proceeded at a low rate of speed,

she would have been able to control the automobile so that she could avoid collision without difficulty.

There was no variance between the pleadings and the proof in this case. The first count charged joint negligence, but all the other counts charged Jacob Tick with negligence only by and through his servant, Janet Tick. They were not charged as joint tort feasons and there was no attempt to prove a joint tort on the part of both defendants. Under the decisions of our Supreme Court it is proper to charge master and servant with joint negligence in the declaration and to permit a verdict to be entered against one defendant alone. *Lindquist v. Hodges*, 248 Ill. 491; *Skala v. Lehon*, 343 Ill. 602. In this case the court found that because of the failure of the plaintiff to prove any relationship of principal and agent or master and servant between the defendant Jacob Tick and the appellant Janet Tick, that on proper motion the defendant Jacob Tick should be and was dismissed. It was approved practice and procedure for the trial to continue against appellant alone.

Appellant lastly complains that the damages allowed by the court were excessive. S. Walter Scott, at the time of his death, was an expert accountant, earning a salary of \$200.00 per month. He had a wife and one child dependent upon him for support; was thirty-two years of age and had an expectancy of life in excess of twenty-nine years. It is difficult to measure the exact amount of damages to be awarded in such cases, but we find no difficulty in saying under the facts proved in this case that the amount of the verdict was not excessive.

Because of the reasons expressed, we believe the judgment of the Circuit Court should be affirmed.

Affirmed.

(Seven pages in original opinion.)



In the Matter of the Estate of William H. Goodwin, a
Minor. In the Matter of the Petition of S. E.
Brittingham, Guardian of the Estate of
William H. Goodwin, a Minor, Appellee,
v. The Vermilion County Building
Association, a Corporation,
et al., Appellants.

282 I.A. 644⁴

Appeal from Circuit Court of Vermilion County.

APRIL TERM, A. D. 1935.

Gen. No. 8898

Agenda No. 9

MR. JUSTICE FULTON delivered the opinion of the Court.

This is a similar case to the matter of the Petition of Rheba Shanks Harris, formerly Rheba Shanks, Guardian of the Estate of James Albert Shanks, a minor, v. The Vermilion County Building Association, a Corporation, et al., decided at this same term of Court.

The facts, differing only in detail as to names, dates and amounts, are substantially the same. The same questions as to the jurisdiction of the Probate Court and its power to exercise general chancery jurisdiction over questions concerning trust funds are involved. The Circuit Court on appeal was limited to the same jurisdictional subjects as that of the Probate Court. In this case it rendered judgment against appellants for the sum of \$1,310.60 and required the officers and directors of the Vermilion County Building Association to take any and all steps that might be necessary, proper and legal to cause said corporation to pay such judgment. Upon the authority of our opinion in the above case the judgment of the Circuit Court was erroneous and it is, therefore, reversed and remanded with directions to dismiss the Petition for citation.

Reversed and remanded with directions.

(Two pages in original opinion.)



The Vermilion County Building Association, a Corporation, Appellant, v. Fred W. Coffing and Jane R. Coffing, Appellees.

Appeal from Circuit Court of Vermilion County.

APRIL TERM, A. D. 1935.

Gen. No. 8904

Agenda No. 15

Mr. JUSTICE FULTON delivered the opinion of the Court.

This was a bill to foreclose a mortgage brought by Appellant against Claude A. Johnston, Mazama S. Johnston, Fred W. Coffing, Jane R. Coffing and M. L. Coutant. The principal amount of the mortgage was the sum of \$8000.00, made and executed in 1927 by Claude A. Johnston and wife. The mortgagors Claude A. Johnston and his wife and the Defendant M. L. Coutant did not file any pleading or answer to the Complaint but made default. In January 1928 Johnston and wife conveyed the premises to the Appellee, Fred W. Coffing and in said conveyance the grantees assumed and agreed to pay the mortgage indebtedness upon the premises involved. In November 1928 Fred W. Coffing and wife conveyed the premises to the defendant M. L. Coutant. The Appellees filed an answer to the bill alleging that they were not the owners of the premises described in the bill of complaint at the time the proceeding was started and were not proper parties thereto; that they executed the deed of conveyance to M. L. Coutant, but at the time the same was delivered Coutant was acting as the agent of the Appellant; that the deed was delivered upon the understanding that it was for the use of the plaintiff and was delivered in complete satisfaction of the mortgage and of the assumption of said mortgage and that there was a complete satisfaction and discharge of the liability of Coffing and wife. The answer further alleged that neither of the Appellees at any time were stockholders or members of the Appellant Association. The evidence shows that on December 31st, A. D. 1927, Johnston and wife executed a contract with the Appellant covering indebtedness of \$8000.00, loaned in full payment of 80 shares of stock in the Appellant corporation and agreed to pay the loan back in weekly installments. On the same date they

executed a mortgage upon the premises in question, securing the payment of the loan of \$5000.00 mentioned in the contract. Both the contract and mortgage provided that foreclosure could not be made until there had been a default of six months in the payment of dues, interest, fines etc. A certificate of stock was issued to Johnston on the same date certifying that he was the owner of the 80 shares. No indorsement or transfer of this certificate of stock was ever made to Coffing and wife. On February 13th, 1928 and real estate was conveyed by Johnston to Coffing and wife containing the assumption clause, and on November 19th, 1928 the premises were conveyed by Coffing and wife to Coutant. On June 11th, 1931, the Appellant filed the bill of foreclosure in this case. No payments were made upon the indebtedness after February 1929.

The testimony of Appellee Coffing shows that at and prior to the time the deed was made to him as grantee, Coutant was a director in the Appellant Association; that Harvey C. Adams was the Secretary of the Association; that prior to the deed of conveyance to Coutant, the Appellee Fred W. Coffing, went to the office of Appellant and saw Mr. Coutant, who had an office on the first floor of the same building as Appellant Association; that Appellee told Coutant that he was financially embarrassed and could not meet his obligations and asked Coutant to take a deed for the premises and release him. Coffing further testified that Coutant said that he would let him know within a few days and that he went back and talked with Mr. Adams, the Secretary of Appellant; that later on, both Coutant and Adams, said they would take the deed and release Coffing and his wife; that the said deed was prepared, executed by Coffing and wife and delivered; that he did not notice at the time that the deed was made to Coutant instead of the Association; that for more than two years subsequent thereto no notices of any kind were sent to the Appellees concerning default in the payments upon said indebtedness.

Appellee Coffing further testified that both the Secretary Adams and the defendant Coutant agreed to accept the said deed in full satisfaction of the said mortgage to Appellant and to release him and his wife from any liability thereon. The evidence further shows that Coutant was the agent for the Appellant in looking after their real estate matters and that frequently he had taken title to several pieces of property as trustee for Appellant Association; that prior to the delivery of the deed Coffing's attorney Mr.

Bookwalter met Coutant and told him that he had sent Coffing up to the Association to make the deed in question. Bookwalter testified that he had made such a statement to Coutant and told him further that Coffing was heavily indebted and he thought it would be a good deal for the Association because it would save them the costs of foreclosure.

Coutant denied many of the material features of Coffing testimony and by way of explanation of the transfer testified that Coffing desired to transfer the real estate because Johnston, the grantor, was supposed to rent the property and pay the dues to the Appellant Association; that he, Coffing, was friendly with Johnston and he did not want to do anything that would interfere with such friendship and that Coutant was to rent the property for Coffing. Adams, the Secretary, denied having accepted the deed on the part of the Appellant Association and stated further that when Coffing delivered the deed to Coutant, he notified him that the conveyance of the title would in no way release him from the obligation to the Appellant Association. This statement was denied by Coffing.

While several questions are argued in the briefs of counsel in this case, the major question is one of fact and that is as to whether the Appellees Fred W. Coffing and wife conveyed all of their interest in the real estate in controversy to M. L. Coutant, as trustee, for the Appellant Association in consideration of the Appellant releasing all liability against them by reason of owning the property and assuming the mortgage thereon. The cause was referred to a Master in Chancery who took the testimony and found in favor of the Appellees and against the Appellant Association. The case was heard on exceptions to the Master's report by the Circuit Court, who entered a decree confirming the Master's report and dismissing the bill for want of equity.

There is a direct conflict in the testimony of Coffing and Bookwalter on the one side and Coutant and Adams for the Appellant. The Master expressly found that title was taken in the name of M. L. Coutant for the benefit of the Appellant Association; That the mortgage and the fee title were therefore owned by the same party and a merger resulted, extinguishing all liability upon the mortgage; that the mortgage debt having been satisfied by the merger no action remained upon the covenant in the deed to assume and pay the mortgage. It is contended by Appellant that the

burden of proof rested upon Appellees to prove that the deed from them to M. L. Coutant was by agreement between them and Appellant, made in full satisfaction and discharge of the mortgage from the Johnstons to Appellant by a preponderance of all of the evidence, and that in this respect the Appellees had wholly failed. While it is understood that the Master saw and heard the witnesses and viewed all the circumstances covered by this transaction and the Court should give the findings of such Master due consideration, the final question for this Court is, "was the decree rendered by the Chancellor the proper one under the law and the evidence?" *Hoelscher v. Hoelscher*, 322 Ill. 406. *Thatcher v. Kramer*, 347 Ill. 601.

We have read the testimony quite carefully and are convinced that the findings of the Master are warranted by a preponderance of evidence in this cause. We have not attempted to review the same in detail but it seems to us unlikely that M. L. Coutant, an employee and director of Appellant Association, would take over the title to the premises involved in this proceeding when the payments on the mortgage were more than eight months in arrears, hold the title to the same for more than two years without collecting any rent or making any reports to the Appellees; or that the Appellant Association would permit a conveyance of the title to one of its directors and employees to run for the same period of time without some notice to Appellees that they were in default in the payment of weekly installments. We are convinced that the testimony of Appellees is more convincing as to the facts surrounding the transaction between the Appellees and M. L. Coutant and that the Master was correct in finding the issues on the question of merger in favor of the Appellees.

Since we believe that Appellees have proved by a preponderance of the evidence that the Appellant Association obtained title from the Appellees and placed the same in the name of M. L. Coutant for their use and benefit and that such contract and transaction operated as a merger and a discharge of the mortgage indebtedness it is not necessary for us to review in this opinion the other questions raised in the briefs of counsel. For the reasons above set forth the decree of the Circuit Court of Vermillion County will be affirmed.

Affirmed.

(Five pages in original opinion.)

RESERVE BOOK

Ill Unpublished Ops

282

77248

This reserve book is not transferable and must not be taken from the library, except when properly charged out for overnight use.

Borrower who signs this card is responsible
for the book in accordance with the posted
regulations.

Avoid fines and preserve the rights of others by obeying these rules.

DATE _____

NAME _____

~~BALDER~~ 262-yds

